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PRESIDENTIAL CAMPAIGN ACTIVITIES OF 1972
SENATE RESOLUTION 60

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HEARINGS
BEFORE THE
SELECT COMMITTEE ON
PRESIDENTIAL CAMPAIGN ACTIVITIES
OF THE
UNITED STATES SENATE
D 359A
NINETY-THIRD CONGRESS
FIRST SESSION

WATERGATE AND RELATED ACTIVITIES

Phase I: Watergate Investigation

WASHINGTON, D.C., JULY 26, 27, AND 30, 1973

Book 7



Printed for the use of the
Select Committee on Presidential Campaign Activities

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SENATE SELECT COMMITTEE ON PRESIDENTIAL CAMPAIGN ACTIVITIES

(Established by S. Res. 60, 93d Congress, 1st Session)



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PRESIDENTIAL CAMPAIGN ACTIVITIES OF 1972 PHASE I: WATERGATE INVESTIGATION

U.S. SENATE,
SELECT COMMITTEE ON
PRESIDENTIAL CAMPAIGN ACTIVITIES,
Washington, D.C.

The Select Committee met, pursuant to recess, at 10:10 a.m. in room 318, Russell Senate Office Building, Senator Sam J. Ervin, Jr. (chairman), presiding.

Present: Senators Ervin, Talmadge, Inouye, Montoya, Baker, Gurney, and Weicker.

Also present: Samuel Dash, chief counsel and staff director; Fred D. Thompson, minority counsel; Rufus L. Edmisten, deputy chief counsel; Arthur S. Miller, chief consultant; Jed Johnson, consultant; David M. Dorsen, James Hamilton, and Terry F. Lenzner, assistant chief counsels; R. Phillip Haire, Marc Lackritz, William T. Mayton, Ronald D. Rotunda, and Barry Schochet, assistant majority counsels; Eugene Boyce, hearings record counsel; Donald G. Sanders, deputy minority counsel; Howard S. Liebengood, H. William Shure, and Robert Silverstein, assistant minority counsels; Pauline O. Dement, research assistant; Eiler Ravnholt, office of Senator Inouye; Robert Baca, office of Senator Montoya; Ron McMahan, assistant to Senator Baker; A. Searle Field, assistant to Senator Weicker; Ray St. Armand, assistant publications clerk.

Senator ERVIN. I am going to make another request to the audience that the audience refrain from expressing, in any manner, approval or disapproval of any person or any question or any answer. We are trying to conduct a dignified hearing which will be as fair as possible to everybody concerned, and the committee is going to have to give serious consideration to the question of excluding from the hearing room persons who audibly express their approval or disapproval of any person or any question or any answer in an audible manner, and I hope that I will not have to repeat this request again.

The committee has received, at least I have received, as chairman of the committee, a letter from the White House dated July 25, 1973:

Dear Mr. Chairman: White House counsel have received on my behalf the two subpoenas issued by you, on behalf of the Select Committee, on July 23rd.

One of these calls on me to furnish to the Select Committee recordings of five meetings between Mr. John Dean and myself. For the reasons stated to you in my letters of July 6th and July 23rd, I must respectfully refuse to produce those recordings.

The other subpoena calls on me to furnish all records of any kind relating directly or indirectly to the "activities, participation, responsibilities or involvement" of 25 named individuals "in any alleged criminal acts related to the Presidential election of 1972." Some of the records that might arguably fit within that subpoena are Presidential papers that must be kept confidential for reasons stated in my letter of July 6th. It is quite possible that there are other records in my custody that would be within the ambit of that subpoena and that I could, consistent with the public interest and my Constitutional responsibilities, provide to the Select Committee. All specific requests from the Select Committee will be

carefully considered and my staff and I, as we have done in the past, will cooperate with the Select Committee by making available any information and documents that can appropriately be produced. You will understand, however, I am sure, that it would simply not be feasible for my staff and me to review thousands of documents to decide which do and which do not fit within the sweeping but vague terms of the subpoena.

It continues to be true, as it was when I wrote you on July 6th, that my staff is under instructions to cooperate fully with yours in furnishing information pertinent to your inquiry. I have directed that executive privilege not be invoked with regard to testimony by present and former members of my staff concerning possible criminal conduct or discussions of possible criminal conduct. I have waived the attorney-client privilege with regard to my former counsel. In my July 6th letter I described these acts of cooperation with the Select Committee as "genuine, extensive and, in the history of such matters, extraordinary." That cooperation has continued and it will continue. Executive privilege is being invoked only with regard to documents and recordings that cannot be made public consistent with the confidentiality essential to the functioning of the Office of the President.

I cannot and will not consent to giving any investigatory body private Presidential papers. To the extent that I have custody of other documents or information relevant to the work of the Select Committee and that can properly be made public, I will be glad to make these available in response to specific requests.

Sincerely,

RICHARD NIXON.

The original letter will be made part of the record and given the appropriate exhibit number.

[The document referred to was marked exhibit No. 94A.*]

Senator ERVIN. How the President expects this committee to specify each document that he says falls within the ambit of one of these subpoenas is a very surprising thing. We are not clairvoyant. Since we have never seen the documents, and since even those of the White House aides who are willing to identify the documents are not allowed to copy them or any parts of them, the President puts on the committee a manifest impossibility in receiving the documents.

The way the Chair construes this letter, the President flatly refuses to give us the tapes that were identified in the subpoena as recording conversations between the President and John Dean, and he lays down the second condition about the written documents which is impossible of fulfillment by the committee because you cannot identify a document which you have never seen, and you have the restriction upon White House former aides that could go through these papers and identify these documents that they cannot copy them, much less carry them out.

So the Chair finds it a little difficult to see where very much cooperation comes from the President in these matters.

This is a serious affair that the committee is engaged in, and here is the President of the United States who has informed us that some of these recordings do have reference to the matters we are investigating but he cannot furnish them to us because we might misconstrue them. And then he tells us he will furnish us the documents that he does not consider to be Presidential papers if we can identify the specific documents, which is an impossibility.

I would just like to say I think the President could comply with the request of the committee in both of these respects, and that the Constitution would not collapse, and the heavens would not fall, but the committee might be aided by the President in determining the truth of his involvement.

*See p. 2907.

Senator Baker.

Senator BAKER. Mr. Chairman, for those of us who are lawyers, and that is meant to be a term of approval rather than disapproval, I think the best way to summarize the present situation is to say thus, the issue was joined.

It is important to note that this committee had cause to issue two subpoenas, rather than one. The first subpoena specified with, I believe, great particularity the conversations, the dates, and the participants that we wanted access to on the allegation of the subpoena that such conversations might be concerned with allegedly legal or criminal activity. The second subpoena dealt with a rather more general demand for documents. I am pleased, Mr. Chairman, that we chose to issue our subpoena in two parts rather than one because, as you pointed out, it is far more difficult to specify with particularity the documents we seek if we do not know what the documents are. But it is fairly easy to specify the tapes or the portions of the tapes that we seek.

In any event, we have arrived at the place now where it would appear that the issues are in fact joined, and that the third branch of the Government now, the Judiciary, may, in fact, be called on to resolve a historic conflict between the remaining two branches.

I think, as in all litigation in this country, it is our desire, all of us, to proceed, if we choose to proceed, to permit the court to make a calm, intellectually, and judicially sound judgment on the appropriateness of the request of this committee together with all of the significant and fundamental constitutional questions that are presented.

I have only one remaining comment, Mr. Chairman, notwithstanding that the issues are joined. I would still hope that there is some way to ameliorate the situation. There have been a number of suggestions in the past, and I have made many suggestions, both public and in the privacy of our executive proceedings. Certain suggestions have been passed on, both formally and informally. But, notwithstanding that we have reached the point where the issues are joined, and litigation may, in fact ensue, I would still hope that we can find a way to permit this committee to have access to the relevant portions of the testimony or of the evidence that we require quickly and speedily, and without a prejudicial effect on our mandate to investigate nor on the appropriate functioning of the Presidency as an institution.

I have suggested, for instance, that an informal panel of distinguished Americans not now holding a position in Government may review these tapes at the request of both the executive and the legislative departments and recommend to both the President and the Congress what portions are relevant and what portions are not relevant. I am prepared to go even further, Mr. Chairman—I have not discussed this with you or my colleagues on the committee—and say that as an extension and elaboration of that suggestion, I would be willing to have one or two or three or a small group of distinguished nongovernmental officials review the tapes and the documents and recommend to the President and to the Congress that certain documents or tapes are or are not relevant to this inquiry, and if they are so intermixed with other conversations or if they lend themselves to more than one interpretation, that such a panel give to us a finding of the net effect of that information. That may not end the controversy. It may be necessary for the committee to pursue the matter further and it may be necessary for the President to disagree but at

least it would move us one space forward. It is not idle optimism that impels me to once again urge that we find a way around this joinder of issue for the benefit of the Congress, of the Presidency, of the President, for the benefit of the courts, that they may be spared the business of defining 200 years after the drafting of the charter document implied, explicit, and overlapping apparent powers, and for the people of the country. So no matter how small the flicker of the flame of optimism may be, I continue to urge that we have an accommodating spirit and that we continue to try to find a way, in this way or any other way, that seems promising of result to produce that desired end. Thank you, Mr. Chairman.

Senator ERVIN. Any other member of the committee have any observations they would like to make at this time?

Then if not, it will be my purpose to call the meeting of the committee at an early time and let the committee decide what action it shall take.

There is an order of the Senate which is set forth in paragraph 77 of the Senate Manual which confers upon this committee the power to bring any suit that the committee feels is necessary to enable it to perform duties it is required to perform by the Senate. It is a very unfortunate thing that the President claimed that he has custody and control of everything in the White House because for this committee taking a very summary proceeding against the actual custodian of these tapes, and the actual custodian of these papers, I don't believe even the President would proclaim that he had custody of all of the things in E. Howard Hunt's locker, including the alleged telegrams that he is alleged to have in his custody. But if his claim be valid, that would have to be true, I would think.

Senator Weicker will resume unless there is some comment by other members of the committee.

Mr. WILSON. I would just like to say that—

Senator BAKER. Mr. Wilson, before you proceed, I don't see—if my colleagues have any objection they might say so and I don't want to embarrass any one of them—but I don't see any point in having an executive session. I think we have discussed the matter and I think we are in a position to act and if you want to do that I am perfectly willing to make a motion, if a motion would be considered in order.

Senator ERVIN. Well, it would be considered in order unless any member of the committee would rather go into executive session. I will leave that up to them, and they could communicate that to me openly or privately.

Senator GURNEY. Speaking for myself, Mr. Chairman, I certainly have no objection to going ahead with a meeting.

Senator INOUE. Go ahead, call the roll.

Senator ERVIN. Senator Talmadge is absent but I guess we can let him record his vote when he gets here. It has been moved.

Senator BAKER. Mr. Chairman, let me state a motion, since there is no objection to proceeding. I move at this time that counsel for the committee be authorized under the appropriate laws and statutes of the United States including the Declaratory Judgments Act to present a justifiable issue to the appropriate court based on the subpoena issued lawfully by this committee and on a letter declining the honoring of the subpoena, dated July 25, 1973, signed by the President of the United

States, and to take such steps as may be necessary to present such issue for adjudication.

Senator ERVIN. Is there any second to the motion?

Senator INOUYE. I second the motion.

Senator ERVIN. All favoring the motion let it be known by raising their right hand. [Raising of hands.]

The six Senators present vote unanimously for the motion and Senator Talmadge will be given an opportunity to record his vote when he comes in.

The Chair recognizes that there is no precedent for litigation of this nature but there originally was no precedent for any litigation, and I think this litigation is essential if we are to determine whether the President is above the law and whether the President is immune from all of the duties and responsibilities in matters of this kind which devolve upon all the other mortals who dwell in this land.

Mr. Wilson, do you want to say something?

Mr. WILSON. Mr. Chairman, I have received information overnight that the committee or its staff possesses at least one document in relation to the sequence of documents of August 3, 1971, which was identified by Senator Weicker yesterday. Am I correctly informed, sir?

Mr. DASH. I indicated there was no correspondence, Mr. Wilson, in sequence. If you are talking about a document in sequence, you have seen the document that might be considered in sequence and it was submitted to you which was the August 11 memorandum from Mr. Young, Mr. Krogh, and Mr. Ehrlichman. That is the only document that might be considered in sequence. The question put yesterday to the committee which I responded to you was, were there any further correspondence, was there a reply to this letter or other correspondence in sequence? There is a document which may be considered to be in sequence in that it followed that letter, and actually refers to that letter but you have seen that document. It was submitted to you, it was in August, a memorandum from Mr. Krogh and Mr. Young to Mr. Ehrlichman. I know of no other document that we have in sequence.

Mr. WILSON. Is that the one in which it is stated that Mr. Hoover said he would proceed with a full-scale investigation of the Pentagon Papers?

Mr. DASH. I think it is the one that says that they would give it an FBI special, something of that nature. We have the document, you have seen it, it was submitted and it is a matter of record.

Mr. WILSON. I just asked you yesterday to produce it.

Mr. DASH. It was produced and when I was questioning Mr. Ehrlichman you were given that document.

Mr. WILSON. Is that the document that is referred to in the New York Times this morning?

Mr. DASH. I did not see any document in the New York Times this morning.

Mr. WILSON. Let me read you the sentence:

Reportedly when the hearing resumes tomorrow he, that is, Senator Weicker, plans to show Mr. Ehrlichman another letter, this one from Mr. Krogh to Mr. Ehrlichman, in which Mr. Krogh remarks that Mr. Hoover had promised a full investigation and knowing that the Bureau had interviewed Mr. Marx' wife.

Is that an accurate report of the document that you have just described to me?

Mr. DASH. We will get the document and we will see.

Senator ERVIN. Mr. Wilson, I might state that it appears by implication or intimation, at least from the President's letter that this committee does not have all the documents it ought to have. It has not been able to get them, and we do not have any Plumbers to go out and seek for them.

Mr. WILSON. You have got a pretty good staff that seeks a lot of things.

Senator ERVIN. Yes, sir, but they do not believe in surreptitious activities.

Mr. WILSON. May I have this clarified before Senator Weicker begins—that the document shows the reference to Mr. Marx' wife?

Mr. DASH. Just a minute. Yes, it is the August 11 memorandum, Mr. Wilson, which you examined thoroughly when I presented it to Mr. Ehrlichman for examination. It is the August 11 memorandum from Mr. Bud Krogh to Mr. David Young to Mr. Ehrlichman in which Mr. Ehrlichman was asked to approve a covert operation to be undertaken to examine all medical files. It included a list of names of persons that it says the Boston grand jury will meet next week, Justice has not made a final decision but it is considering subpoenaing the nine following individuals and Mrs. Louis Marx is one. Then the memorandum says that, "We have received a letter from Director Hoover confirming that the Ellsberg case and related matters will be handled on a Bureau special basis."

And that is the only memorandum or document we have.

Senator ERVIN. I believe Mr. Wilson is asking for another letter that was offered in evidence here to the effect, from J. Edgar Hoover, stating that they had transmitted to someone all of the files they had and stating they would go ahead and investigate everybody and they said also including a statement of Ellsberg in which he stated in the closing paragraph that they were prepared to interview all other people except Ellsberg.

Mr. DASH. Mr. Wilson, do you have a copy of the transcript?

Mr. WILSON. No. I remember your giving me a three- or four-page August 11 document which is exhibit what?

Mr. DASH. It is exhibit No. 90.*

Mr. WILSON. No; I mean in this proceeding of Mr. Ehrlichman. Did it not get a new number?

Mr. DASH. We do not have new numbers, it was listed as exhibit No. 3 of an executive session.

Mr. WILSON. Thank you. Yes; I have that one, I think before me. Is that the one in which it says that they were continuing to press the FBI to determine some subjects in paragraph 6?

Mr. DASH. We are continuing to press the FBI, yes, to determine whether the report of a foot locker—

Mr. WILSON. Thank you very much.

Mr. DASH. And that was submitted to you.

Senator ERVIN. I would like to state that the reason Senator Talmadge is not here at this moment is the fact that he is chairman of a very important conference committee on a very crucial piece of legislation, and that the conference committee is highly desirable since

*See Book 6, p. 2643.

this piece of legislation relates to agriculture. It is absolutely essential that the legislation be passed before the beginning of the next fiscal year so that the American people who are interested in agricultural pursuits can know what they can do, and that is the reason he had to give that task priority over his task as a member of this committee on this particular occasion.

Mr. Wilson, I would ask you the question—I want you to get any documents we have got.

Mr. WILSON. Thank you, Mr. Chairman, I am sure you do.

Senator ERVIN. And those documents your attention has been called to, do they comport to the document you mentioned as being printed in the New York Times?

Mr. WILSON. Say that again, sir.

Senator ERVIN. The two documents that your attention has been called to, do they refer to the documents reported to in the New York Times?

Mr. WILSON. I think so. Senator Weicker will explain it if he cares to. I do not care to pursue it.

Senator WEICKER. Mr. Chairman, I do not think I have any explaining to do. You have raised a point, Mr. Wilson, saying there is a document outstanding that you have not received when, in fact, you had received it 2 days ago. As I understand it, that is the only point that has been made here, that you have had that very document in your hands for 2 days.

Mr. WILSON. Then, as far as you know, the New York Times is not talking about any other document?

Senator WEICKER. As far as I know, you have had the information that you requested today in your hands for 2 days. I have no other documents to go ahead and present to you.

Mr. WILSON. Thank you, sir.

Senator WEICKER. I have some questions for your client.

Mr. WILSON. Thank you.

Senator ERVIN. And you might proceed at this time with your interrogation of the witness.

Senator WEICKER. Mr. Ehrlichman—

Senator ERVIN. Just 1 minute, Senator. Senator Talmadge has called and asked that he be recorded voting in favor of the motion which has been adopted by the vote of six other Senators and it is so ordered.

Senator WEICKER. You stated yesterday, Mr. Ehrlichman, that the FBI, through its leadership of Mr. Hoover, was not pushing, was not pushing the Ellsberg investigation, allegedly because of a relationship Mr. Hoover had with Mr. Ellsberg's father-in-law, Mr. Louis Marx. And that it was not until after September 20, 1971, that the FBI "was clicking on all eight cylinders". Would that be correct?

TESTIMONY OF JOHN EHRLICHMAN, ACCOMPANIED BY JOHN J. WILSON AND FRANK H. STRICKLER, COUNSELS

Mr. EHRLICHMAN. I do not think I said "after." If I said after I should have said by. Senator, and the reason that I picked that date is that on or about that date there was a meeting which the Attorney General had with the President where he gave the President a progress report on this matter, and that was the gist of his report at that time.

Now, when that commenced I do not need to testify to, because that is not something that I know of my own knowledge.

Senator WEICKER. But in any event, one of the difficulties apparently on the FBI investigation was the relationship between Mr. Hoover and Mr. Marx, is that correct?

Mr. EHRLICHMAN. That is what the Attorney General reported to me.

Senator WEICKER. Are you aware of the fact that Mr. Louis Marx was interviewed by the FBI in June 1971, before Mr. Krogh's memorandum to you of August 11, which memorandum has been referred to here this morning, and before the September 3, 1971, break-in by Hunt and Liddy, part of the covert operation you approved? Did you know that Mr. Marx had been interviewed in June?

Mr. EHRLICHMAN. I—by the FBI, Senator?

Senator WEICKER. That is correct.

Mr. EHRLICHMAN. I do not recall that fact.

Senator WEICKER. Well, then, how could you ascribe the reason of Louis Marx for the failure of the FBI to get information from Louis Marx as the reason for setting up this unit and for having this or more specifically, having the unit investigate Ellsberg as they did?

Mr. EHRLICHMAN. Well, what I attempted to testify to was the report that I had had from two people who were intimately familiar with the progress of this case. One was Mr. Krogh and the other was the Attorney General, Mr. Mitchell. They both reported to me what I have testified to here.

Now, it may be, I do not know this, and I would be speculating in this answer, but it may be that the explanation is that that interview was either unsatisfactory or perfunctory or did not adduce the information that was desired or that that interview is what resulted in this disciplinary action that Mr. Hoover imposed. I just do not know.

Mr. WILSON. Mr. Chairman, may we see that report, the FBI report?

Senator WEICKER. What FBI report?

Mr. EHRLICHMAN. You mean the interview with Mr. Marx?

Mr. WILSON. Yes.

Senator WEICKER. Go ahead, Mr. Chairman.

Senator ERVIN. We got FBI reports by permission of Attorney General Kleindienst on condition that we would not release them to the public. If you get—

Senator WEICKER. Mr. Chairman, I think maybe I can be helpful here. My knowledge of the interview by the FBI and Mr. Marx comes from Mr. Marx and he was interviewed in June of 1971.

Mr. WILSON. Well, I have now established that the committee is in possession of an FBI report.

Senator ERVIN. No; I am mistaken.

Mr. WILSON. Is that so?

Senator ERVIN. We do not have the FBI reports. They were allowed to inspect them and to make notes from them, that is all.

Mr. WILSON. No summary?

Senator ERVIN. They have staff summaries but we got those under great difficulties and under an agreement that we would not release them to the public. If you can get all of those things with the Attorney General's consent, he had custody of them, or Director Kelly, I would be delighted for everything to come out that can be shown. It's all right with me.

Senator BAKER. Mr. Chairman, if I could say a word at this point, if Senator Weicker will yield for a second, we have been deeply involved in trying to get documents and making documents public. I can understand Mr. Wilson's concern in this respect, but you and I, Mr. Chairman, were parties to the conversation with former Attorney General Kleindienst where very strict requirements were imposed on our access to those. Rather than ask the witness to be relieved of the obligation, we assumed at that time, for my part, I am willing to ask the committee to be relieved of that obligation so we can show that information to the witness and counsel; but since I was there and know the rather extraordinary lengths we went to to gain access to them in any form, I am also keenly aware of the promise and the commitment that we made with respect to the confidentiality of raw FBI data. But I would hope, if there is no objection on behalf of the committee, that the committee will formally request the Attorney General of the United States to relieve us of that obligation.

Mr. WILSON. I would be grateful to you if you would do so. And I want to tell Senator Weicker I don't question for one moment, sir, the remark that you got some information from Mr. Marx, but it can't be as accurate, may I say, with all due respect, as the raw report would be itself, and I appreciate the suggestion of the offer of the vice chairman on our behalf, perhaps on yours, too, to seek to have that document released to us.

Senator ERVIN. To keep the record absolutely straight, as Senator Baker said, this agreement was made between him and myself and Attorney General Kleindienst, and we had to accept the terms under which we were offered access to summaries and the condition was, as we informed the Attorney General, we did not want the summaries or any FBI records for use as evidence. We merely wanted them to identify persons who could be summoned or subpoenaed as witnesses because it was revealed by those summaries that they had some knowledge of the matters we were investigating, and we gave the Attorney General our solemn promise that the committee would not release these publicly.

Senator BAKER. Mr. Chairman, I ask consent that counsel for the committee be authorized to request of the Attorney General the release from that commitment of secrecy so that a copy of the staff summary can be given to counsel for this witness.

Mr. WILSON. Thank you Mr. Vice Chairman, and I assume from what has been said and forgive me for pursuing this further because I am grateful for what just has been volunteered, members of the committee or the staff did read either the summary or the raw report of the FBI on this so-called interview with Mr. Marx, and your committee does have knowledge of the contents of this report, and we don't have it.

Senator WEICKER. Mr. Chairman, may I speak to this point for a minute, please?

Senator ERVIN. Yes.

Senator WEICKER. Mr. Chairman, may I address myself to this point. I think I should point out the piece of history, legislative history that at the time the chairman and the vice chairman made the determination with the Attorney General that only they would be allowed access to the FBI files, the junior Senator from Connecticut, excitable as he gets, jumped up and down and objected.

Senator ERVIN. I will certainly corroborate that. [Laughter.]

Mr. WILSON. Senator, maybe we are going to get it now you and myself.

Senator WEICKER. And so, having an investigation to pursue, I went down other avenues. I have already told you, I have talked to Mr. Marx and I tell you now I have also talked to Mr. Brennan, the Assistant Director of the FBI, head of Division 5 who ordered that the investigations take place, so I can confirm to you from both the FBI, that did the investigating and from Mr. Marx who was investigated, that an investigation took place in June of 1971, and Mr. Chairman, you have lived up to your agreement with the Attorney General of the United States and I have never seen any FBI file that has come into your possession or the possession of the vice chairman or any member of the staff, majority or minority counsel.

Senator ERVIN. Yes, and to make the record even clearer, as a result of the position stated by the Senator from Connecticut, I called Attorney General Kleindienst and asked him to modify the agreement, and allow five other members of the committee to see these FBI files, and he declined my request, and then after he was succeeded by Attorney General Richardson, I wrote him a letter repeating the request, and he declined the request to extend that privilege to the other five Senators. He did modify to allow one member of the staff designated by both the vice chairman and myself to go to look at some of the original FBI files but let me tell you, it hasn't been any bed of roses trying to get any information out of the executive branch of the Government that is germane to this investigation. I am going to suggest in the interest of time that you communicate to the staff the documents that you want instead of us.

Mr. WILSON. Thank you.

Senator ERVIN. And we will do the best we can. If they are within our power we will certainly try to give them to you.

Mr. WILSON. Thank you, Mr. Chairman.

Senator ERVIN. So I would suggest that Senator Weicker proceed with the interrogation.

Senator BAKER. Before Senator Weicker does, if I may impose on his time one more moment. I hope it clearly appears from this record that I don't believe anyone on this committee wants to withhold any document or information from this witness or his counsel; and we would not impose any restraint on that were it not for the condition imposed by former Attorney General Kleindienst.

So that was the basis for my unanimous-consent request and I gather from the chairman's statement just now that, upon the request of counsel, we will proceed in the manner I outlined in my request.

Senator ERVIN. Yes.

Mr. WILSON. Thank you both.

Senator WEICKER. You are a good lawyer, Mr. Wilson. I have got to get my engines warmed up again.

Mr. WILSON. Thank you, sir.

Senator WEICKER. All right, now, Mr. Ehrlichman, isn't it fair to say then that Mr. Krogh—do you have the August 11 memorandum before you there? Do you have the August 11 memorandum before you? Isn't it fair to say Mr. Krogh's August 11 memorandum asks for Mrs. Marx' interview because both you and he already knew

that he had been interviewed. There is no mention of Mr. Marx. This is August 11 now.

Mr. EHRLICHMAN. Yes.

Senator WEICKER. But it asks for Mrs. Marx' interview.

Mr. EHRLICHMAN. Would you point out where it does that? I don't recall that. Yes, it does.

Senator WEICKER. On the page where it says members. It says Boston grand jury will meet next week and the first name on there is Mrs. Louis Marx.

Mr. EHRLICHMAN. That does not say anything about the FBI interviewing her. It says they have not made a final decision but is considering subpoenaing her to a grand jury, I don't see anything about interviewing her.

Senator WEICKER. The memorandum to you says the FBI has placed the *Ellsberg* case on special FBI status.

I am going to very definitely pin down one fact here today, and that is that you based the push on the FBI on the fact that there was some relationship between the Director and Louis Marx which made it necessary for you to go outside of normal law enforcement channels, and we have already established the fact that Mr. Marx was interviewed in June 1971.

Did you ever ask any member of the FBI if Mr. Marx had been interviewed in June 1971?

Mr. EHRLICHMAN. Well, if I disassociate your question from your direct statement which I don't agree with.

Senator WEICKER. What don't you agree with?

Mr. EHRLICHMAN. Well, if I could explain: What I attempted to testify here to the committee was the total setting in which Mr. Krogh came to me and, in turn, the representation was made to the President that the special unit inaugurate investigation of Mr. Ellsberg and his associates. The total setting included the Attorney General's information to us with regard to the investigation of specifically Mr. Louis Marx but that was not the only problem. It was a general problem with regard to the FBI's approach to this whole case. That was the way Mr. Krogh reported it to us, it was corroborated by the Attorney General, and it did not rest solely on the interview of any one witness, Mr. Marx, Mrs. Marx, or any one individual witness.

So, I had no occasion to inquire of anyone that the FBI or for that matter anywhere else, about the specific interview of any one witness or any particular witnesses. Mr. Krogh described for us a set of circumstances which was general. I did not then recommend to the President that Mr. Krogh's eventual suggestion be adopted. I talked to the Attorney General about it. The Attorney General corroborated Mr. Krogh's description of the FBI's general approach to the case. He was having his problems, and so that validated Mr. Krogh's report in general. The Attorney General cited this one instance as exemplary of the problem, and a particular problem for him at the time vis-a-vis the Director. And so then the recommendation was made that these two men Krogh was working with, be designated as investigators to go and do this following. This was very reluctantly entered into. It was not something, Senator, that the White House wanted to do or at least that I personally wanted to see the White House do, unless we had to in order to move this thing along. The President frankly was really keeping the pressure on to get results and that was the setting.

Senator WEICKER. Did the Attorney General know you were going to get into the covert number business?

Mr. EHRLICHMAN. The Attorney General knew.

Senator WEICKER. So to solve this problem—

Mr. EHRLICHMAN. The Attorney General knew and the Director of the FBI knew that the White House was going to send investigators out; yes, sir.

Senator WEICKER. Let me read to you from the transcript of yesterday.

Senator WEICKER. In other words, what I gather you are saying he was fixed in his views to the extent—

this is Hoover—

that he would not agree to a break-in of Daniel Ellsberg's psychiatrist's office.

Mr. EHRLICHMAN. That, of course, overstates it dramatically, Senator. What he would not agree to was an investigation of Mr. Marx and others close to Daniel Ellsberg.

Now, let me drop back in time for a moment.

In July, were you aware that in July 1971, specifically on July 20, 1971, that the FBI had attempted to interview Dr. Fielding?

Mr. EHRLICHMAN. I surely was—I was aware of it at some time but I don't remember when, Senator, but I do recall the fact that they unsuccessfully attempted to interview the doctor.

Senator WEICKER. And this was before you decided to get into his records by covert action; is that correct?

Mr. EHRLICHMAN. I am not sure I knew that before. [Conferring with counsel.]

Senator WEICKER. Let's run through the dates again. In June 1971 Mr. Louis Marx was interviewed by the FBI. You say that you had no knowledge of that.

Mr. EHRLICHMAN. I certainly don't recall having any knowledge of it. My consistent impression had been that the Director had disciplined or threatened to discipline people in the FBI for proposing that interview. I wasn't aware that the interview had gone through the sanctions, as I understood it was proposed, because of the fact that it had been proposed.

Senator WEICKER. In fact the interview did take place. In July 1971 the FBI attempted to interview Dr. Fielding, as you termed it, unsuccessfully, which is correct.

On August 3 Mr. Krogh gets a letter, which has been given to you and your attorney from the Director of the FBI, indicating full cooperation in the matter of the *Ellsberg* case. On August 11 you get a memorandum from Mr. Krogh and Mr. Young which indicates the status of the matters and also indicates that "We have received a letter from Director Hoover confirming that the *Ellsberg* case and related matters will be handled on a bureau special basis."

Now, in light of all these events, all of which transpired prior to the break-in into Dr. Fielding's office, do you maintain that this was for any other purpose, other than to smear Dr. Ellsberg?

Mr. EHRLICHMAN. I certainly do, Senator. It's a highly selective assembling of evidence, if I may respectfully say so. Incidentally, my wife chided me a little bit last night because I appear to scowl at you when I answer your questions. The fact is you have over your head

two of the greatest lights I have encountered, and I am afraid that has to account for the way I look in your direction; I am sorry. [Laughter.] The fact here is that in addition to these facts which you have stated, some of which are still not in my knowledge, but I am certainly willing to accept.

Senator WEICKER. Which facts are not within your knowledge?

Mr. EHRLICHMAN. Well, for instance, I did not know that Mr. Marx had been interviewed in June by the FBI.

Senator WEICKER. You said you did not recollect he was interviewed, that is what you said you didn't recollect?

Mr. EHRLICHMAN. What I said, I have no knowledge but if you tell me so, you are relying on Mr. Marx and I am perfectly willing to do that, too.

The point is that all through this period of time on the one hand the President of the United States is pressing for results. On the other hand, Mr. Krogh is reporting to us from within the White House that he can't get the FBI moving, and the Attorney General is corroborating to us directly what Mr. Krogh is reporting.

Now, I can only testify of my own knowledge here what people reported to me because I made no independent check of this, and it was my clear recollection that up until this meeting of the President with the Attorney General around the 20th of September, I had the continuing impression, because of continuing reports that came to us, that the FBI was not yet moving satisfactorily.

Senator WEICKER. Did you receive this information from the August 11 memorandum; is that the basis of it?

Mr. EHRLICHMAN. Well, the August 11 memorandum is not a description of what was really going on. It was in the sense a function, it was a description of what had been designated by the FBI as a categorical designation.

Now, interestingly enough, it took 3 months for the FBI to get around to putting that special case or priority or class A designation on this case, whatever it was, and I think the fact that some 60-90 days passed before the Bureau would put that designation on, the biggest raid in top secret documents in the history of the country has to indicate a certain amount of latitude on the part of the FBI up to that point.

There was a continuing skepticism on Mr. Krogh's part about the bureaucratic paper coming over from the FBI in justification of its efforts like the memo you showed me yesterday, and he continued to express that skepticism and the Attorney General continued to corroborate that right up until this meeting and I can't fix it precisely by date, but my best recollection is that it was in the third week in September when the Attorney General vouched for the fact that things were moving satisfactorily at that point.

Now, I am sorry that I can't give you direct personal information on this. I can only give you a feel for what it was that the President had before him and that I had before me from others on this subject.

Senator WEICKER. You have seen the memorandum of August 26 from Dave Young to you. Do you have that memorandum with you?

Mr. EHRLICHMAN. Yes, sir.

Senator WEICKER. Let's go to page 5:

In connection with issue (9), it is important to point out that with the recent article on Ellsberg's lawyer, Boudin, we have already started on a negative press image for Ellsberg. If the present Hunt/Liddy Project Number 1 is successful, it will be absolutely essential to have an overall game plan developed for its use in conjunction with the Congressional investigation. In this connection, I believe that the point of Buchanan's memorandum on attacking Ellsberg through the press should be borne in mind; namely, that the situation being attacked is too big to be undermined by planted leaks among the friendly press.

So you knew there was a press purpose to this break-in?

Mr. EHRLICHMAN. Well, as I said yesterday, Senator, I don't have a recollection of the memo itself, if you are asking me what I knew about an express purpose of the investigation of Daniel Ellsberg, I have testified already my understanding of the purposes.

The object here was not to prosecute Mr. Ellsberg, and as far as I am concerned, not to prosecute Mr. Ellsberg and not to persecute Mr. Ellsberg. The object here was this same unit conducted with regard to the arms, the strategic arms limitation talks and other security matters, and that was to find out how it happened and to make sure within the Government that it did not happen again.

Now, with regard to the congressional hearing aspects and the public relations aspects of this *Ellsberg* case, I think you can develop additional information on that from others. I am not your best witness on that. I do know that there was in the White House a desire to air this whole thing once the facts were known, and it was hoped that a committee of the Congress would pick it up and would call witnesses and would expose how such a thing could happen in our governmental system today where the treachery was within the Government, if it was, or the treachery was in the think-tank apparatus, if there was, and I am not suggesting there was, but whether there was, and who the individuals involved were, what their motivations were, and why this thing happened.

So I don't question for a minute that there was under active consideration the possibility of fostering a congressional inquiry into this, and I have to say it would have been a healthy thing if we could have had such a thing.

But as far as the management of that particular effort is concerned, I am not your man.

Senator WEICKER. You are my man.

Mr. EHRLICHMAN. Sir?

Senator WEICKER. You are my man; you are a good witness. [Laughter.]

Do you acknowledge this memorandum which I referred to, the August 26 memorandum, having received it?

Mr. EHRLICHMAN. I don't know what you mean by acknowledged. I see an "E" on it that is certainly very much my "E." And it would indicate that I had read it and that I had approved the concept of having a meeting on September 9 with Mardian, Buzhardt, Krogh, Young, and Macomber, and I think that meeting was eventually held.

Senator WEICKER. And one of the questions raised in the memorandum, if you just slip back to the page before at the bottom of page 4, says, "How quickly do we advance to bring about a change in Ellsberg's image."

Mr. EHRLICHMAN. That is footnoted to the material that you just read.

Senator WEICKER. That is footnoted through the material I just read. So I am going to just run through the dates I just read because I don't think there is much more we can do with the subject. But let's review carefully what occurred.

On June 1971—let me ask you this, Mr. Ehrlichman, would you at this time prefer, in the light of deference of evidence that has been presented to you, to leave Mr. Marx aside as one of the reasons for entering into this covert operation, or would you like to stay with Mr. Marx as a reason?

Mr. EHRLICHMAN. Yes. I can't leave it aside, Senator Weicker, because, of course, the fact is that the Attorney General did call and did convey his problems with regard to the Marx investigation, and that is a matter of history and record.

There is no way to blink that aside. Now, you say that there was—

Senator WEICKER. Wait a minute. Stop there, Mr. Ehrlichman. We are not going into the motives of the Director. We are going into the reasons for the break-in in Dr. Fielding's office.

Mr. EHRLICHMAN. I think you have—

Senator WEICKER. The investigation took place.

Mr. EHRLICHMAN. You have asked if I would like to withdraw that factor as a justification for the investigation, and it is not something that can be withdrawn. It is a fact.

Now, I cannot explain for you something that is not in my knowledge, which is the fact that there was an interview of Mr. Marx. It may have been a totally satisfactory and productive interview. On the other hand, it may have been the kind of a first interview by the FBI that requires followup, and that is what precipitated the Director's displeasure. I don't know and I guess you don't know.

Senator WEICKER. Well, I know that Mr. Marx met with the Director.

Mr. EHRLICHMAN. Mr. Who?

Senator WEICKER. Mr. Louis Marx, 30 years ago in Dinty Moore's Restaurant, and that is the last time they ever met, and they corresponded.

Mr. WILSON. Excuse me, Senator Weicker.

Senator WEICKER. Yes, Mr. Wilson.

Mr. WILSON. I don't believe it is proper, I submit to the chairman that it is not proper for a member of this committee to produce evidence of this sort.

Senator WEICKER. The issue is Mr. Marx.

Mr. WILSON. I know, but the fact he only saw him in Dinty Moore's Restaurant 30 years ago is the rankest kind of hearsay from you.

Senator WEICKER. Mr. Wilson, your client is alleging a friendship for Mr. Marx.

Senator ERVIN. I am not going to tell a Senator of the United States how to conduct himself.

Mr. WILSON. Am I presumptuous in interfering on behalf of my client?

Senator ERVIN. Well, I think you maybe have a right to object to the admissibility of testimony. But every Senator of the United States

has a right to do what he thinks his duty requires him to do, and I am not going to undertake to prescribe standards for other Senators.

Mr. WILSON. Well, the record shows my objection, doesn't it?

Senator ERVIN. Yes, sir.

Mr. EHRLICHMAN. Senator, could I add my hearsay to this so you can evaluate it for what it is worth. What I was told at the time was that the Director, who is well known for his Delmar Racetrack vacations in southern California every year, had an acquaintanceship with Mr. Marx, which arose from his time in California on those vacations.

Now, I don't know whether that is true or not, but that is what I was told.

Senator WEICKER. My conversation is not hearsay, it is a hearsay with Mr. Marx in which he told me what I am transmitting to you here today.

Let me review again the dates, and then we will leave this subject; in June 1971, Mr. Marx is interviewed by the FBI.

Mr. EHRLICHMAN. I don't know.

Senator WEICKER. In July of 1971, Dr. Fielding—an attempted interview is had with Dr. Fielding who refuses the interview on the advice of his attorney. On August 3—

Mr. EHRLICHMAN. Do we know why he did that?

Senator WEICKER. This is something that would have to be discussed with Dr. Fielding and his attorney.

Mr. EHRLICHMAN. I see.

Senator WEICKER. But the interview was refused; that is a fact.

On August 3, we have evidence before the committee that the Director writes to Mr. Egil Krogh indicating full cooperation by the FBI. In your testimony yesterday, you termed this puffing. I think we finally agreed on that as a term. It is not my characterization; it was your characterization.

On August 11, you get a memorandum from Mr. Krogh and Mr. Young, and in that memorandum it is stated: "In this connection, we would recommend that a covert operation be undertaken to examine all the medical files still held by Ellsberg's psychoanalyst covering a 2-year period in which he was undergoing analysis, approve, disapprove."—we have your initial "E," with your comments underneath—"if done under your assurance that it is not traceable."

And then on August 26, we have the memorandum which I just referred to, and again a memorandum you obviously received, initialed by you in which the issue of Ellsberg's press image is discussed, and then, lo and behold, on September 3, 1971, the break-in actually occurs.

Isn't it fair to say, here is my question, that the August 11 memorandum approving the covert activity, your approval to obtain Dr. Fielding's records which resulted in the September 3 break-in, was a result of Dr. Fielding's refusal to provide this information voluntarily to the FBI and not as a result of any shortcoming of the FBI?

Mr. EHRLICHMAN. Well, Senator, by way of answering your question, I think we ought also to include the other reference in your exhibits, the letter of October 3 where it appears that the President—pardon me, August 3—where the President, on July 29, found it necessary to write to the Director, to jiggle up the Bureau. I know of my own knowledge that in addition to that, the President had a telephone conversation with the Director on this subject, and, of course, the

other part of the memo of August 11, just two paragraphs below where I put my "E," where they reported "We are continuing to press the FBI for action on certain items," which I think have to also be weighed in along with these other conversations that I have indicated this morning in my previous answer, and I think the long and short of this is that while you can find typical selective evidence in a matter of this kind, you have to take it on all four corners. And I assure you that the decision that was made in this matter to put investigators in the field was taken most reluctantly and for genuine purposes, and the purposes are simply to supplement what was considered to be an inadequate effort at the time by the Federal Bureau of Investigation.

Now, in order for you to satisfy yourself on this you ought to hear from Mr. Mitchell, you ought to hear from Mr. Krogh, you ought to hear from those who were on the firing line of this, and not simply someone like myself, who was receiving these reports secondhand.

Senator WEICKER. I am going to repeat my question which you have not answered but, since you have raised this other issue, just what did you expect to do with the information so obtained, trying to supplement the efforts of the FBI? Did you intend to introduce this in court?

Mr. EHRLICHMAN. The purpose of this was to correct what was obviously a very serious shortcoming, either in the Government itself or in the think tanks who had custody of the secret documents, because the confidential documents system had been compromised.

Senator WEICKER. What did you intend to do with the evidence so obtained from Dr. Ellsberg's psychiatrist?

Mr. EHRLICHMAN. The——

Senator WEICKER. Did you intend to introduce it in court?

Mr. EHRLICHMAN. No, sir, that was not the purpose. The Justice Department had prosecutorial——

Senator WEICKER. What was the purpose?

Mr. EHRLICHMAN. Excuse me, Senator. The Justice Department had an investigation for prosecution purposes which was ongoing under Mr. Mardian. This was not intended to satisfy that need. This was intended to satisfy the President of the United States, who was saying how could a thing like this happen? What have we done to prevent it happening again? Is this Rand Corp., and all these other defense think tanks that are at fault in this or is our own Defense Department or is it the State Department or just where is the weakness in this?

Senator WEICKER. Mr. Ehrlichman, are you telling me that the break-in in Dr. Fielding's office was to satisfy the President of the United States?

Mr. EHRLICHMAN. Well, now, you have [laughter] misunderstood me, Senator.

The President wanted very much to make sure that a thing like this could not happen again. How one learned whether Ellsberg acted alone, as a disgruntled employee of a think tank, whether he acted as a member of an international spy ring delivering secrets to a foreign embassy or just what his role was, where he fit, had to be determined in the opinion of the investigators by every available means.

Now, obviously, as we discussed yesterday, this business of the psychiatric profile—incidentally, Senator. I would like to refer to something that came in last night. As you all probably are very familiar on

the committee, when you are a witness here you get all sorts of suggestions by telegram and telephone and so on, and someone overnight very kindly called in to suggest that the committee staff check the Warren Commission report and the Kerner Commission report for their references to the use of psychiatric profiles in domestic criminal acts, and that was something I did not know about but apparently, they felt that the use of the psychiatric profile is a very valid investigatory device and, of course, the CIA feels that, too. They have this section on it. Yes, we have the citations that were given us by a citizen who just wired in or called in. It is the Warren Commission report pages 26, 461, and 781; and the Kerner Commission report page 473. So this is apparently a technique of investigation which has considerable authenticity and dignity, and that, this business of trying to get additional information to permit the CIA psychiatric profile section to complete its work was the purpose of this additional task imposed upon these investigators.

Senator WEICKER. Such CIA work would not be legal, in the United States, would it?

Mr. EHRLICHMAN. That is a law question I cannot answer, Senator. That has been debated back and forth in the McClellan committee already in the Senate. They have not yet issued their report. Evidently there is considerable authority for the proposition that it either is or that it ought to be, in the Kerner Commission report and in the Warren Commission report. It is one of those gray areas, apparently.

Senator WEICKER. Mr. Chairman, I have one additional question. I do not want to impose on the time of the other Senators, but I would like to continue for a few additional minutes, if that is possible.

Senator ERVIN. Yes.

Senator WEICKER. Now, Mr. Ehrlichman, you testified 2 days ago that on June 28 you called Pat Gray and had him cancel a meeting with General Walters because of the problem with leaks at the FBI. Let me be specific. I am now referring to page 5304 in response to questioning by the minority counsel, Mr. Thompson—and this is relative to calling off that meeting of the 28th with Pat Gray.

My concern, strong concern about the meeting was that it was going to include some staff members from the FBI and as I say we were experiencing these leak problems and right at that particular time one of the people who would have been included in that meeting was under very strong suspicion as being the source of that leak.

Then, again, on page 5305, you state: "because at that time we were talking with Mr. Kleindienst about how to go about smoking out this problem around Mr. Gray, frankly." Those are your words.

And yet, yesterday when you testified on the turning over of documents, and this was the same day, on the 28th, to Pat Gray in your testimony you make the statement as the reason for giving two packages of documents to Pat Gray and I quote you: "It seemed to me like a good way of making sure that the documents did not leak as long as Mr. Gray held on to them."

Now, my question is very simple. On the same day you canceled a meeting with Mr. Gray because of leaks and then turned around and gave him documents so they would not be leaked. Which is it?

MR. EHRLICHMAN. Well, my problem was not with Mr. Gray personally with regard to leaks. Obviously, we would not have turned the documents over to him if we thought he was going to leak them.

The problem was, as you read in the first transcript, was with a staff person high up in the FBI or at least, we suspected it was, we never established it. At the time we had had a number of conversations with Mr. Gray about the problem, and I had had some conversations with Mr. Kleindienst about the problem, and we had conversations about how to solve the problem. When I said we went around Mr. Gray, it was that Mr. Kleindienst, unknown to Mr. Gray, so that he would not even know it was being done, was going to plant a story or a fact, and we were going to see in such a way that the individual under suspicion might be disclosed. It was a long shot but it might have worked.

Now, I had implicit confidence in Mr. Gray as not being the source of the leak because we had had experience with Mr. Gray in the Justice Department and at HEW before that, and he was extraordinarily reliable, and so that was not the problem, and I hope that I did not—I hope we made that—

Senator WEICKER. I do not think you did because you repeat your sentence to us because at that time we, and I assume that is you, “were talking with Mr. Kleindienst about how to go about smoking out this problem around Mr. Gray, frankly.”

MR. EHRLICHMAN. That is right, and the problem was on his staff. It was a holdover from the FBI who had been there when Mr. Gray came.

Senator WEICKER. Do you go around people when you trust them?

MR. EHRLICHMAN. Sometimes, sometimes, and it was Mr. Kleindienst's view that that was a way to proceed and I do not say it was his view or mine, but that we would not bring Mr. Gray into our confidence with regard to Mr. Kleindienst's idea for planting a story. That is the only time we went around Mr. Gray, that I can think of.

Senator WEICKER. One last series of questions, sir.

MR. Chairman, I do not mean to—I can see you warming up on that microphone and I just want to make sure I am not—

Senator ERVIN. You just said one last question, I was not wanting you to ask one last question, I was going to get there so I would not fail to recognize Senator Montoya. So far as I am concerned, you can go ahead and ask more than one last question.

Senator WEICKER. This will be my last series on this go-around.

You testified yesterday that on April 15 you called Pat Gray and that he told you he had taken the Hunt papers to Connecticut and destroyed them. Is that correct?

MR. EHRLICHMAN. I do not recall his telling me that he took them to Connecticut.

Senator WEICKER. All right. Did he tell you that he destroyed them?

MR. EHRLICHMAN. Yes, sir.

Senator WEICKER. Now, let me read your testimony at that point.

That was—

and this was in response to Senator Gurney—

That was in April of this year, we had a conversation. The President asked me to telephone Mr. Gray. It was Sunday night and it was the 15th of April at about 10:15 p.m. I was in the President's EOB Office and he had a meeting that day with Mr. Kleindienst. The subject of these documents came up at that meet-

ing and the President asked me to call Mr. Gray and find out what the documents were and where they were. So I did that. Mr. Gray was not home. When he got home he called back and we completed the conversation in the President's office.

Now, let me ask you this. After you received the word from Mr. Gray, which I believe was on April the 15th, did you transmit that information to the President?

Mr. EHRLICHMAN. Yes, sir.

Senator WEICKER. On what day was that?

Mr. EHRLICHMAN. He was sitting right there. I transmitted it instantly.

Senator WEICKER. He was sitting with you when you made this call to Pat Gray?

Mr. EHRLICHMAN. Yes, sir.

Senator WEICKER. And this was on April 15? Is that correct?

Mr. EHRLICHMAN. Yes, sir.

Senator WEICKER. Was any action taken by the President, any action recommended by you, when you received word that the Director of the Federal Bureau of Investigation had gone along and, in fact, burned or destroyed, rather, Department files?

Mr. EHRLICHMAN. Yes, sir. The President took the action that was taken, and his first action was to contact either Mr. Kleindienst or Mr. Petersen, I am not sure which of the two it was, and he was asked to do nothing further until they had an opportunity to check into it and report back.

Senator WEICKER. In other words, he asked for a report.

Mr. EHRLICHMAN. Well, he asked for an investigation and a corroboration of this, and circumstances surrounding it so that he would know how to take the next step.

Senator WEICKER. Gray admitted to you that he had destroyed the files?

Mr. EHRLICHMAN. That is correct.

Senator WEICKER. What is there to investigate in this matter?

Mr. EHRLICHMAN. Well, you have a situation that obviously is considerably more than just an employment problem here, and the President felt—you see he had spent the major portion of that day or a good portion of that day with the Attorney General and the Assistant Attorney General on the whole case, and he was desirous of making sure that any step that he took was in coordination with those gentlemen, and he, as a matter of fact, forbore to take a number of steps on his own motion in order to work in concert with the Attorney General and the Assistant Attorney General, Mr. Petersen.

Senator WEICKER. So on April 15 you and the President learned that files had been destroyed, and the reaction of the President is "We are going to get a report."

Mr. EHRLICHMAN. No, he was obviously very concerned and upset by this, and—

Senator WEICKER. Well, let me recount to you a personal experience because I had the identical experience that you and the President had on April 25. I was called by the Director, who was still the Acting Director, even though he had misfed the President of the United States and the head of the Domestic Council, that is, had burned the record. I was called by the Acting FBI Director in his office and I sat in the chair and the Acting Director turned to me and in essence said

the same thing that he told you, and the President on April 15, "I went ahead and I destroyed these files."

Now, I had many of the crosscurrents of emotion that I am sure must have also attended you and the President. He is the Acting Director of the FBI, I am sure that crossed your mind. I am a U.S. Senator, I am a member of this committee, and I am sure it must have crossed your mind that the President, he was the President of the United States and you were one of his closest advisers, and quite frankly I had the additional emotion of seeing a man before me who was my friend. These were the crosscurrents of emotion when the identical piece of information came to me as had come to you 10 days earlier. And I must confess that I won't use more colorful language when this was dropped in my lap and some thoughts went through my head as to what do I do with it. What do I do to meet my obligations not to let down a friend but, sir, you can make sure that the information, information of this import is made public and made available to the committee. It was within the next 36 hours that the Acting Director told me substantial portions of what had occurred and it was within that period of time that I made sure that the story was laid out in front of the public as soon as I got it, not under my name because I am not getting to the top of the backs of any of my friends, but it wasn't something that could be withheld from the American public. These were facts, they were known, all that was left is how were they going to be told. But certainly in no ways did it ever occur to me that this was something that could be left unattended to, that he could remain as Acting Director of the FBI, that the matters which I had heard of could not come to the attention of this committee, and as you know or as the record will indicate, having first had the news on April 26—I beg pardon, April 25, the story was told to the American people on the 27th and Mr. Gray stepped down as Director on the 28th.

Now, would you indicate to me the difference—

Mr. EHRLICHMAN. Sir, it's just two different approaches, Senator.

Senator WEICKER. No, the information we received was identical.

Mr. EHRLICHMAN. The President notified the chief law enforcement officer and you notified the newspapers. As I say, it's two different approaches to the same problem.

Senator WEICKER. No, Mr. Ehrlichman, I wanted to make sure that I lived up to all the obligations that I had, the obligation as Senator, the obligation that I thought he owed the American people as FBI Director to tell them the whole story, the obligation I had as a member of this committee and the feelings that I had for a friend. There were various ways it could be handled but I wanted him at least to get out and have the chance of telling his story before he was left in place by apparently you and the President who had discovered the identical facts on April 15, but had made no move to either get Pat Gray, relieve him of his duties as Director of the FBI, or to give information to the American people as to what he had done.

Mr. EHRLICHMAN. Well, Senator, I can't agree with your assertion that the President made no move. He immediately informed those responsible for this entire investigation. Now this is, as you all on the committee well know, a very complex investigation with a lot of aspects to it and with real problems of the rights of individuals and various kinds of legal overtones. Certainly the President felt, I know he felt

this had to be done in an orderly fashion by the law enforcement people who were responsible for the prosecution of the case. As it turned out it was well that he did because Mr. Petersen, in pursuing the investigation with Mr. Gray, was able to develop other facts as a result of being able to do so without the cameras on, so to speak, which are as I am sure you recognize both a positive and a negative aspect of a matter of this kind in terms of adducing the facts.

Now, I think that in hindsight, while it may sound very self-serving for me to say so, the President took precisely the right steps in immediately informing Mr. Petersen as he did, so that the prosecutors and the law enforcement people could do their work in making the scales before it was all over the newspapers. Now the identical same consideration applied in John Dean's situation where the President forbore to discharge Mr. Dean at Henry Petersen's request, to give Mr. Petersen and his people an opportunity to complete their work before that relationship was severed.

Now, I think that we don't always have the luxury of gratifying our first instincts about a matter of this kind when we have the responsibility for the orderly discussion of the laws in a prosecution of this kind.

Senator WEICKER. What was the purpose of your phone call on April 15 to Mr. Gray, incidentally?

Mr. EHRLICHMAN. I explained it was the result of the President's conversation that day with the Attorney General and Mr. Petersen, in which the question of these documents came up, and the question that he put to me, was whether I had any information with regard to the whereabouts of the documents, and I said "yes, I did." I was there at the time when an envelope was delivered by Mr. Dean to Mr. Gray, and that he said, "yes, that they were aware of this," and he said, "Has Gray ever given them back?"

And I said, "I don't know."

And he said, "Get on the phone and get ahold of Gray and tell him what we know about this and find out where those documents are and what is in them."

Senator WEICKER. In other words, the enforcement agencies, the enforcement agencies had been working prior to April 15.

Mr. EHRLICHMAN. Oh, sure.

Senator WEICKER. The information had been given before the grand jury by Mr. Dean?

Mr. EHRLICHMAN. I don't think Dean had been to the grand jury. I think Dean had talked with the prosecutors and had given them some of this information, if not all of it, but we were operating with what the Attorney General and the Assistant Attorney General had told the President, which the President recalled of the conversation and was imparting to me.

Senator WEICKER. Well, I would just conclude by again asking you why Mr. Gray was left in place when this information was known to you and to the President and other members of the executive branch.

Mr. EHRLICHMAN. Well, I believe I have answered that question. Senator Weicker. It was in aid of the Assistant Attorney General, Mr. Petersen, and the Attorney General, Mr. Kleindienst. I recall hearing later that Mr. Petersen had, in fact, interviewed Mr. Gray following this, and had received conflicting stories. This would have been prior, I guess, to your interview with Mr. Gray, and finally that the

matter had been resolved. They wanted to get a written statement, they wanted to get the kind of evidence that they could use in court, apparently, and so the President was giving them an opportunity to do that kind of thing.

Senator WEICKER. This wasn't the first time that you left Mr. Gray in place, was it?

Mr. EHRLICHMAN. The first time that I left Mr. Gray in place?

Senator WEICKER. This wasn't the first time, in other words, that in an adverse situation to Mr. Gray he had been left in place, is that correct?

Mr. EHRLICHMAN. I am sorry, I don't understand your question.

Senator WEICKER. Well, for instance, during his confirmation hearings, when he ran into some heavy weather, did you have any comments to make at that time?

Mr. EHRLICHMAN. Did I?

Senator WEICKER. Yes, about Mr. Gray.

Mr. EHRLICHMAN. Yes, indeed.

Senator WEICKER. Can you remember what you said about him in the confirmation hearings at that time?

Mr. EHRLICHMAN. I think you probably are referring to my saying that he was hanging in the wind and should be left to spin slowly.

Senator WEICKER. Yes. Let him hang there. "Well, I think we ought to let him hang there, let him twist slowly, slowly in the wind."

Mr. EHRLICHMAN. That is my metaphor, yes.

Senator WEICKER. And he was twisting slowly, slowly in the wind on April 15?

Mr. EHRLICHMAN. He was being investigated, investigated, and investigated on April 15.

Senator WEICKER. I have no further questions, Mr. Chairman.

Senator ERVIN. Senator Montoya.

Senator MONTOYA. Thank you, Mr. Chairman.

I know we have been on this burglary for quite some time, but I want to clear one point, Mr. Ehrlichman.

At what point did you feel that the FBI really got into the investigation of the Ellsberg case in a manner that was satisfactory to White House expectations?

Mr. EHRLICHMAN. I cannot fix that date, Senator, except to say that it was sometime prior to September 20, because I do recall a meeting either that day or very close to it.

Senator MONTOYA. Is that September 20, 1971?

Mr. EHRLICHMAN. Yes, sir.

Senator MONTOYA. And the burglary occurred on or about September 3 or 4 of 1971?

Mr. EHRLICHMAN. Around that time.

Senator MONTOYA. Yes.

And I believe your testimony indicated that you were notified by Mr. Krogh and Mr. Liddy or either of them while you were at Cape Cod what, 2 or 3 days later?

Mr. EHRLICHMAN. No, sir.

Senator MONTOYA. When were you notified?

Mr. EHRLICHMAN. To the best of my recollection I was notified after I returned to the city having been——

Senator MONTOYA. When?

Mr. EHRLICHMAN [continuing]. Having been at Cape Cod in a kind of a remote area where I was not easily reachable and I was never notified by Mr. Liddy. My best recollection is that I was notified by Mr. Krogh.

Senator MONTAYA. Then how many days after the burglary would that be?

Mr. EHRLICHMAN. Sir?

Senator MONTAYA. How many days after the burglary?

Mr. EHRLICHMAN. Well, I am sorry I can't fix the date of the break-in for you.

Senator MONTAYA. Was it within a few days?

Mr. EHRLICHMAN. It was Labor Day weekend, as I understand it that they broke in. Monday was a holiday. My first day back in the office was Tuesday, and I think it was probably that Tuesday.

Senator MONTAYA. It was the Tuesday after that weekend then?

Mr. EHRLICHMAN. Yes, sir.

Senator MONTAYA. So that would make it——

Mr. EHRLICHMAN. I believe that——

Senator MONTAYA. So that would make it on or about September 4, or 5, or 6.

Mr. EHRLICHMAN. I have a calendar here, could I look at it?

Senator MONTAYA. Well, the date is not relevant.

Mr. EHRLICHMAN. I see.

Senator MONTAYA. But it would be in that neighborhood, would it not?

Mr. EHRLICHMAN. Yes, sir.

Senator MONTAYA. All right.

Now, after about September 20, as you indicated, the FBI really started working on this investigation.

Mr. EHRLICHMAN. No; I can't say that. I am sorry. The only thing I can say is that I recall a meeting where there was a meeting of the minds between the Attorney General and the President as to the performance level of the Justice Department, including the FBI on the Pentagon Papers case, and the President's feeling, based on the Attorney General's report at that meeting was that the performance level was now satisfactory. Now, when—you have asked me for a specific date which I can't give you——

Senator MONTAYA. It was on or about that time, then?

Mr. EHRLICHMAN. I assume so.

Senator MONTAYA. All right.

Then, did you in the White House with your investigative unit, develop sort of an investigative partnership with the Department of Justice and the FBI?

Mr. EHRLICHMAN. I would say not.

Senator MONTAYA. But you were working in concert toward the same objective, were you not?

Mr. EHRLICHMAN. I do not believe that the White House people performed any specific investigations of that character after the 20th of September.

Senator MONTAYA. All right.

Did you impart all the information that you had to the Department of Justice?

Mr. EHRLICHMAN. I did not, but I am sure that either Mr. Krogh or Mr. Young did.

Senator MONTOYA. Then, is it your testimony that they did?

Mr. EHRLICHMAN. That they did what, Senator?

Senator MONTOYA. Give all the information which they had to the Department of Justice.

Mr. EHRLICHMAN. I cannot vouch for that. I just assume that.

Senator MONTOYA. Well, this is one thing that strikes my fancy. Mr. Ehrlichman, that the burglary was committed on September 3 or 4 of 1971. That you knew about it a few days later upon your return from Cape Cod, that Mr. Liddy knew, that Mr. Krogh knew and that presumably other people in the White House knew. Then, why did it take them until April 15, 1973, for the U.S. district attorney here in the District of Columbia, Mr. Silbert, to first find out of that burglary and then have to transmit that news to the Department of Justice?

Mr. EHRLICHMAN. I do not think it did, Senator.

Senator MONTOYA. Well, that is what happened, according to the memorandums—

Mr. EHRLICHMAN. No, sir.

Senator MONTOYA [continuing]. Submitted to this committee by Mr. Silbert.

Mr. EHRLICHMAN. The only thing I can tell you is what Mr. Dean told me about that, and that is that the Justice Department had that information a good deal sooner than that.

Senator MONTOYA. Why did Mr. Silbert have to transmit this information about the break-in to Assistant Attorney General Petersen on April 15, 1973, then?

Mr. EHRLICHMAN. Well, if Mr. Dean told me the truth he did not have to because Mr. Petersen already knew it.

Senator MONTOYA. You knew the truth?

Mr. EHRLICHMAN. I knew the truth?

Senator MONTOYA. You knew that the burglary had been committed?

Mr. EHRLICHMAN. No; you misunderstood me. If Mr. Dean told me a year or so ago the truth, that Mr. Petersen then knew about the break-in, then Mr. Silbert's transmittal of the paperwork in April of this year was not necessary.

Senator MONTOYA. But he did transmit it to Assistant Attorney General Petersen?

Mr. EHRLICHMAN. There is no question about it.

Senator MONTOYA. On that date.

Mr. EHRLICHMAN. But the question is whether that was news to Mr. Petersen or not.

Senator MONTOYA. Then, Mr. Petersen, the Assistant Attorney General, then informed on April 26, informed Judge Byrne of the burglary attempt or the actual burglary. I should say. Now, that is also in the record in this hearing already.

Mr. EHRLICHMAN. Well, so is the fact that Mr. Dean told me a year before that or so that Petersen already knew it.

Senator MONTOYA. Why did not Mr. Petersen take action then before?

Mr. EHRLICHMAN. I do not know, Senator. As a matter of fact, I do not even know that that is true but that is what Mr. Dean told me.

Senator MONTÓYA. There were motions pending in the trial in California and petitions in discovery presented to the court to try to get all the necessary evidence that might be helpful to the defendant, and this did not appear at that time until April 15 when Attorney General Petersen presented this evidence to Judge Byrne. Now, is that not odd?

Mr. EHRLICHMAN. It is something I cannot explain. I think the record is very plain, and I think it is in the committee record, as a matter of fact, that the photographs of the break-in were transmitted by the CIA to the Justice Department a long, long time before that.

Senator MONTÓYA. Yes, the photographs were, but there was no evidence connecting the photographs to the break-in in the Ellsberg psychiatrist's office until later.

Mr. EHRLICHMAN. Senator, there was a great big picture, as they tell it to me, and I have not seen these pictures, but I understand there is a great big picture of Gordon Liddy with his mustache, and a picture that has Dr. Fielding's name and address in the background, and Gordon Liddy's picture has been in the Post every day, and it does not take too much imagination to figure out who he was.

Senator MONTÓYA. Well, it strikes my fancy that there is no evidence in the record here, and this burglary has been discussed, there is no evidence here that the Department of Justice knew about it until Mr. Silbert's memo was presented to Assistant Attorney General Petersen.

Mr. EHRLICHMAN. Senator, the only thing I can say—

Senator MONTÓYA. That is the state of the record at the present time.

Mr. EHRLICHMAN. The only thing I can say is that my hearsay is as good as Mr. Dean's credibility on the subject, and I am obviously not the one to vouch for that.

Senator MONTÓYA. All right. Now, let us go into another subject. In the matter of Presidential appointments. I will start out by asking you whether this came within your domain.

Mr. EHRLICHMAN. The setting of appointments of the President's time?

Senator MONTÓYA. No, the matter of the President making Presidential appointments of the different agencies.

Mr. EHRLICHMAN. At some period of time, I did get into that. For instance, after the election in 1972, I was very much involved in that.

Senator MONTÓYA. Did you get involved at all prior to 1972?

Mr. EHRLICHMAN. Yes, but on a case-by-case basis where it would be a domestic department where I might have something to contribute.

Senator MONTÓYA. That is what I mean.

Mr. EHRLICHMAN. Yes, sir.

Senator MONTÓYA. Presidential appointments in the different departments.

Mr. EHRLICHMAN. But it was not something that was routinely cleared to me so that I signed off on every departmental appointment or anything of that kind.

Senator MONTÓYA. Who would run a check on the possible appointees?

Mr. EHRLICHMAN. Well—

Senator MONTÓYA. Would it be the FBI?

Mr. EHRLICHMAN. Ordinarily there would be among other things, an FBI check on major appointees to determine conflict of interest and this kind of thing.

Senator MONTROYA. And so the FBI—would you say that they conducted very complete and concise checks on these possible appointees?

Mr. EHRLICHMAN. They were not very good, Senator, in my opinion.

Senator MONTROYA. In what respect?

Mr. EHRLICHMAN. Very superficial. They would go around and they would talk to a lot of people and get a lot of hearsay about them and there would be very little followup. I was consistently critical of the quality of that work.

Senator MONTROYA. Well, did you provide some input into these checks yourself or through your employees?

Mr. EHRLICHMAN. Very seldom. Occasionally when there was an appointee that I had known, an FBI man would come around as they would to you or to any citizen, but that was only two or three times, probably.

Senator MONTROYA. But the White House did not have a setup for checkups?

Mr. EHRLICHMAN. Oh, yes, there was a special office and it was in the office of the counsel where these things were routinely done and they had also a personnel office, and the two worked together generally, in Mr. Haldeman's area of responsibility, to perfect these files of Presidential appointees.

Senator MONTROYA. What kind of checkups would the FBI conduct? What was their sphere in doing their investigation?

Mr. EHRLICHMAN. Well, you know, you fill out one of these long forms and you have to put down where you lived for the last 30 years and where you have worked for the last 30 years, and as I gather it, and I am no expert on this, but I gather they go around and talk to people in these different places and they ask about the candidate.

Senator MONTROYA. Now, you were Assistant to the President for Domestic Affairs?

Mr. EHRLICHMAN. Yes, sir.

Senator MONTROYA. And have been for quite some time—and were for quite some time until your resignation.

Mr. EHRLICHMAN. 1970.

Senator MONTROYA. Yes. Now, in this capacity, you had to evaluate the possible appointments made by the President and provide input by way of recommendation after reading reports, would you not?

Mr. EHRLICHMAN. Only occasionally, where they were referred to me for my special consideration.

Senator MONTROYA. What departments did you deal with as Assistant to the President for Domestic Affairs?

Mr. EHRLICHMAN. Any department that had a domestic aspect to it.

Senator MONTROYA. All right. Then, those who worked under you necessarily informed you as to what they undertook with respect to communication or relations with the different departments under your jurisdiction? Would that be a correct statement?

Mr. EHRLICHMAN. Not on any regular basis, Senator.

Senator MONTROYA. But on important policy matters, would they?

Mr. EHRLICHMAN. Well, I relied on them to conduct their responsibilities, bringing to me only problems that they felt they could not handle themselves.

Senator MONTROYA. Well, would you be able to throw some light before this committee as to the genesis of the enemies list about which testimony has been adduced?

Mr. EHRLICHMAN. No, sir.

Senator MONTTOYA. Did you receive any memorandum with respect to the enemies list from John Dean or any other person in the White House?

Mr. EHRLICHMAN. No, sir, not that I can recall.

Senator MONTTOYA. Did you recall the enemies list with Mr. Haldeman?

Mr. EHRLICHMAN. No. I did after the testimony here about it because I do not recall ever hearing of it before.

Senator MONTTOYA. Did you discuss the enemies list with Mr. Colson?

Mr. EHRLICHMAN. No.

Senator MONTTOYA. Now, in your capacity as Assistant to the President for Domestic Affairs dealing with the different departments, were you aware of the effort that was being made to place Mr. Colson and Mr. Liddy in the Internal Revenue Service?

Mr. EHRLICHMAN. No, sir.

Senator MONTTOYA. You have heard about it since then?

Mr. EHRLICHMAN. I am not sure that I have.

Senator MONTTOYA. Well, Dean's memorandum reflects something to this effect.

Mr. EHRLICHMAN. I missed that, I am sorry.

Senator MONTTOYA. All right.

Now, you do know that the White House made quite a few requests for the income tax returns of individuals, do you not?

Mr. EHRLICHMAN. I would doubt that seriously, Senator.

Senator MONTTOYA. You would doubt that there were no requests?

Mr. EHRLICHMAN. I would doubt that the White House had made requests for the income tax returns of individual citizens.

Senator MONTTOYA. All right.

Now, I will introduce for the record the statistical data furnished by the Internal Revenue Service in a book entitled "Statistics, Requests for Inspection of Income Tax Returns or Data From Returns by Federal Agencies for the 6-Month Period, January 1, 1972, to June 30, 1972," and then another volume with the same title for the period July 1, 1972, to December 31, 1972.

Senator ERVIN. The reporter will mark them as exhibits.

[The documents referred to were marked exhibits Nos. 95 and 96.*]

Senator MONTTOYA. I will turn to the first page of the document in each instance and read for your benefit "Tax Checks Requested by Federal Agencies, January 1, 1972, to June 30, 1972. Agency: White House, No. 477." And then on the second document "Tax Checks Requested by Federal Agencies, July 1, 1972, to December 31, 1972. Agency: White House, No. 438." What comment do you have on that?

Mr. EHRLICHMAN. Well, your question was whether or not the White House had requested anybody's tax returns and I said I would doubt that. Now, I don't know what a tax check is in those statistics. Perhaps there is a definition in there, but a tax check, as I understand it, is to find out if an individual has tax problems before he is appointed to Federal office, because obviously you don't want to appoint an assistant secretary who is going to be indicted for tax fraud the next day. So it is a routine procedure for this personnel office that I mentioned or for the counsel's office to find out from the IRS if these indi-

*See pp. 2909 and 2911.

viduals have problems. That does not mean calling for their returns and going through and seeing who they had taken as deductions or what their sources of income may be.

As a matter of fact, my personal experience with this, Senator, has been in the instances where the President was considering individuals for the U.S. Supreme Court, and he asked me to determine whether people that he had in mind had any tax problems, and being kind of new to the business I thought that what one did was to, you know, get the returns and flip through and I discovered that the White House could not get an individual's income tax return, the thing that the citizen files with the Government, that it's simply not available, even for such a situation as the appointment of a Supreme Court Justice.

So, what you do is you ask the tax people to tell you if an individual that you have in mind has any significant tax problems, and then if they do, they would send back a memo saying "This fellow is free of any tax problems for the past 6 years" or they would send back a memo saying there is a tax problem for the tax year 1970, it is in negotiations, it will probably be settled by such and such a date.

Senator MONTONA. Well, Mr. Ehrlichman, I asked you those questions before I asked you this one and you said that you were not aware of any requests?

Mr. EHRLICHMAN. I am sorry your question did not say tax check, your question said tax return, Senator, and that is a very different thing.

Senator MONTONA. Do you mean to tell me now there were no requests for tax returns of taxpayers?

Mr. EHRLICHMAN. I am not aware of one.

Senator MONTONA. Well, would you say that the record of the Internal Revenue is correct?

Mr. EHRLICHMAN. Well, you see we are talking about apples and oranges, that is our problem.

Senator MONTONA. No, we are not talking about apples and oranges.

Mr. EHRLICHMAN. Well the apple.

Senator MONTONA. We are talking about one thing.

Mr. EHRLICHMAN. Tax checks or tax returns.

Senator MONTONA. How can you get a tax check if you don't see a tax return?

Mr. EHRLICHMAN. Well, you ask somebody else in the Internal Revenue Service who has the legal authority to examine it to see if there is a problem or not.

Senator MONTONA. Now, you are talking about apples and oranges.

Mr. EHRLICHMAN. Well, I think I can assure you, Senator, that at least in my personal experience, no one on the White House staff has any access to your tax return or the tax return of any citizen. At the same time if you were being considered by the President for the Supreme Court, it would be a matter of routine for someone on his staff to ask the Internal Revenue Service to examine your file, as they have the legal right to do, and report to the President whether or not you have a tax problem.

Senator MONTONA. Let me read you some other instances where there were requests for tax returns from other departments. Department of the Treasury for the period January 1, 1972, to June 30, 1972, the Department of Justice requested 407 returns as against 477 by the White House.

Mr. EHRLICHMAN. Are those returns or checks?

Senator MONTAYA. Well, these are tax checks requested by Federal agencies under that title.

Mr. EHRLICHMAN. Well, you see, I might say this by way of a footnote to all this, and I am by no means an expert in this but I understand that certain departments and agencies, not the White House, but certain departments and agencies by statute, by laws passed by the Congress, have the right to see returns. The Department of Justice, I guess, is one. But that is a very different thing than the question that you put to me in the first instance.

Senator MONTAYA. Yes, but those are categorized by department here in this list, and the White House is categorized separately?

Mr. EHRLICHMAN. Yes.

Senator MONTAYA. That is the point I am trying to make.

Mr. EHRLICHMAN. Well, if that says the White House received returns rather than got checks, you know, just memos of checks, that would be a different thing.

Senator MONTAYA. Who else would have the supervision or authority to make these requests in behalf of the White House?

Mr. EHRLICHMAN. Well, I assume——

Senator MONTAYA. Besides yourself.

Mr. EHRLICHMAN. I assume the counsel did. I guess I had the authority but I exercised it in very few cases as assistant to the President and they would be either Cabinet officers or Supreme Court appointees ordinarily where the President didn't want to tell a lot of people who he was considering. The counsel, I believe, ordinarily and routinely had the responsibility for determining whether a person had a tax problem or not.

Senator MONTAYA. Don't you think that these tax checks and request for tax returns represent quite a great number for the White House because they only have 400 employees there?

Mr. EHRLICHMAN. Oh, but you see they are checking the employees to be appointed in all of the departments under what are called a Presidential appointment. That would be Cabinet, Under Secretaries, Assistant Secretaries, agency heads, deputy agency heads of various agencies like the Veterans' Administration and places of that kind.

Senator MONTAYA. You mean during this period that you were considering approximately a thousand persons for appointment and announcing to the entire country that you were reducing the Federal force.

Mr. EHRLICHMAN. Well, there is quite a bit of turnover, Senator. I don't know what the number would be, but it doesn't surprise me that the volume would be, say 400 in a 6-month period.

Senator MONTAYA. All right.

Mr. EHRLICHMAN. You see we have what 2 million Federal employees or something, down from 21½ million.

Senator MONTAYA. Well, you gave us a lecture on political science the other day, you tell us.

Mr. EHRLICHMAN. Well, that is my best recollection.

Senator MONTAYA. All right. Thank you.

Now, let us go into another phase.

Mr. WILSON. Mr. Chairman, if the Senator—Senator Montoya is going to another phase I wonder if he would be kind enough to let me see that document from which he is reading.

Senator MONTORA. Yes, two documents.

Mr. WILSON. May I return them after the recess?

Senator MONTORA. You certainly may, sir.

Mr. WILSON. All right, thank you.

Senator MONTORA. Now, on July 21 you were quoted in an article in the New York Times as being in favor of releasing the tapes which are in controversy.

Did you make that kind of a statement?

Mr. EHRLICHMAN. Well, I have had a lot of trouble with quotations in the New York Times. Senator, and that is one of them.

What happened there was that I gave a television interview to a fellow, you know they come out and sit on my lawn and as I came out in the morning it is pretty well unavoidable, and this fellow said something to the effect, "Do you have anything to worry about if these tapes get out?"

And I said, "No, I don't think I have anything to worry about." I didn't know I was being taped, but I don't think I said anything there that would—that I would be ashamed of.

And he said, "Well, then, you think the President ought to release these?"

And I said, "Well, you know you have got to look at this from two standpoints, certainly from my standpoint I have no problem but he has a much larger picture to look at."

Well, the word "certainly" is what carried on the wire, and the rest of the sentence didn't get carried, and so I saw the wire story and it said: "Ehrlichman today in response to a question, should the President release these tapes said 'certainly'."

Well, what I said was in effect, "Certainly I don't have anything to worry about but the President has got a lot more worries than I have about the country and the separation of powers and his relationship with the Congress and so on."

Now, having just said that sentence, I will bet you the New York Times tomorrow says, "Ehrlichman says the President has a lot more to worry about than he does."

Senator MONTORA. Well, now for 2 days we have been talking about a burglary here, the burglary that you justify as legal under implied Presidential constitutional power. You say that it was committed as a part of an effort to protect the security of our country. Many of us say this was clearly illegal.

Now, I pose this question to you. And I want to develop in my own mind a profile of the President and probe into his inner thinking. If the President or someone at the White House was willing to order this questionable covert action, why does not the President now take cognizance of a real threat to the Presidency of our country, the erosion of confidence of our people, the internal institutional chaos that has set in, and now perform a really patriotic act, to bring stability to our country, perform a legal act by shedding the mantle of executive privilege and release these tapes and records to this committee so that the American people can have some light on the truth and put an end to the Watergate tale of suspense and tragedy?

Can you answer that question?

Mr. EHRLICHMAN. Well, obviously, that is a question. Senator, that ought to be directed to the President rather than to me.

Let me just tell you my own view of this as a citizen. Obviously I don't speak for the President, and haven't for a long time.

The chairman and learned counsel yesterday demonstrated to my satisfaction that these constitutional issues are not susceptible of easy decision. I would certainly be the last to try to make a quick response to your question. It is a profound question that involves the meaning of our Constitution and the relationship of our governmental institutions. I don't think it is really appropriate for me to respond to it in terms of substance here. It is obviously a much more important question than someone in my situation ought to try to answer right off the top of his head.

Senator MONTROYA. Well, if you were Chief Counsel at the White House or if you were acting in the role of Assistant to the President for Domestic Affairs, and you were aware of the chaos that is setting in in this country with respect to the Presidency, and you were aware of other things, what would you advise him?

Mr. WILSON. Mr. Chairman, may I—

Senator ERVIN. I believe that a proper question because—

Mr. WILSON. May I suggest that I never like to answer "if I" questions.

Senator ERVIN. Well, I never did like to answer "if I" questions myself, but I think counsel, Senators have a right to ask them.

Senator MONTROYA. I think the Senator is asking it—

Senator ERVIN. Since the witness has gone afield and expressed opinions about the power of the President under the Constitution and I think since he was a lawyer for the White House at one time, and since he was Chief Domestic Adviser of the President, I think it's all right to ask him what he would advise the President.

Mr. WILSON. I think he wants to answer it my way.

Senator BAKER. Mr. Chairman, I am not sure I fully understood the point that was going to be made by Mr. Wilson. I might add this one word of caution. We have taken proof from witnesses about what they would do in a set of circumstances, and we have heard questions put and answers made to hypothetical situations; but the chairman has admonished from time to time, as I have, that is not proof of material fact in these proceedings. It rather may or may not be relevant to the state of mind or the attitude of the witness as it bore on his conduct. If that is the case here, that is, if it has to do with the impact that point of view might have on the witness' conduct I can't see anything wrong with it. If it has to do with trying to prove the substance of the hypothesis, then I think it would be different.

Senator MONTROYA. Mr. Chairman, if the Senator would yield to me on my own time.

Senator BAKER. I will give you part of my time, Joe.

Senator MONTROYA. This witness is an expert on the President's demeanor. He is a specialist on White House procedures and thinking, and I think he would be the best witness, other than Mr. Haldeman, to answer such a question which is bothering the entire country, and I am not facetious about it. I was really sincere about it.

Senator BAKER. I am not facetious either. I was agreeing with you. I was telling him he ought to go ahead and answer the question.

Senator MONTROYA. I know that but I was trying to lay the premise for why I asked this particular question.

MR. EHRLICHMAN. Senator, let me preface my answer by saying I am not an expert and that is the very reason I am going to answer this question the way I will. You asked me in terms of how the President approaches a problem like this, I guess, and you were talking about his temperament or his makeup and so on. If I were asked by the President sitting there to approve this problem and give him a recommendation, I would have to know a great deal more about the elements or the constitutional law question that are involved than I know sitting here today. So one of the first things I would do, as had been my practice there is to draw on the very best minds that we could assemble from around the country, in and out of Government, to advise on this subject. We did this, for instance, in a somewhat critical phase of the bus-ing problem, and we had people like Alexander Bickel and Charles Wright from Texas and good legal minds from outside, and we had the best people we could find inside the Government as well as to counsel with us, both by way of memorandum and in person, as to the various options that would be available to the President, and certainly as assistant to the President it was my job not to decide for myself the right thing to do and then tell him, but to try to assemble for him as much information, as much valid opinion as there was on the subject and spread it before him so that he had the entire picture, and that is the way he preferred to work.

Now I have no doubt that in this dispute that is precisely what he has done, although I don't know that of my own knowledge, I know how this man works. So that I would expect that he has drawn upon legal scholars, the best people in the Solicitor General's office and the Department of Justice and everywhere that he can find respectable views as to the relationship of the Presidency to the Congress under the Constitution.

Senator ERVIN. I think you are now testifying about the President's mind rather than your own.

MR. EHRLICHMAN. Sir?

Senator ERVIN. I am sorry I did not sustain the objection.

MR. EHRLICHMAN. I understood that was one of the things that the Senator was interested in.

Senator MONTOLA. I was asking what you would say and not what the President would say.

MR. EHRLICHMAN. Well, it would only be after a process of review like that that I would be equipped to say. I feel very inadequate myself without the background in constitutional law. I could shoot from the hip and say were I sitting in the White House my instinctive reaction would be to feel my obligation to preserve the institution of the Presidency intact. You see, we passed this torch of the Presidency from one man to one man and it is his job for an entire period of 4 years to maintain the integrity of and the viability and the constitutionality and the function of that office, and there is nobody else who is going to help him. The Congress is in the business of strengthening the Congress' prerogatives, and we have this constant adversary relationship that goes on between our branches of Government.

Senator ERVIN. Just in the interest of time, are you not testifying that you do not know what you would do if you had a responsibility different from the one you now have?

Mr. EHRLICHMAN. Sir?

Senator ERVIN. Are you not telling us in short that you do not know what you would do if you had the responsibility and the power which you do not now possess?

Mr. EHRLICHMAN. Well, it was admittedly a hypothetical question—

Senator ERVIN. Yes.

Mr. EHRLICHMAN [continuing]. To which I was asked to respond, Mr. Chairman.

Senator ERVIN. I agree, I should have sustained the objection, at least, not sustained the objection, but to indicate that what you would do sheds no light except as a citizen. It might illuminate the thing, but I interpret your answer to say that since you do not now have the position of adviser to the President, you do not know what you would do if you should be restored to that position under the present circumstances.

Mr. EHRLICHMAN. I have a feeling you are objecting to the answer and not the question, Mr. Chairman.

Senator ERVIN. No, no. Well, frankly, I think, I gave my opinion about the question. I do not care for iffy questions myself.

Mr. EHRLICHMAN. I understand. Well, obviously, without a great deal of study and a great deal more expertise than I have, I would not feel competent to advise either the President or this committee.

Senator ERVIN. The only thing that I recognize that article is long and time is fleeting, in our hearts though stout and brave, still like muffled drums are beating funeral marches to the grave. We have taken 10 or 15 minutes on this proposition.

Senator MONTOYA. Mr. Chairman, I have no other questions other than to make an observation that in my opinion, the witness has answered that he does not wish to answer. That is in effect your answer.

Mr. EHRLICHMAN. Well, without a great deal more study, Senator, it would be very presumptuous of me to involve myself in a question as profound as that.

Senator MONTOYA. Thank you, sir.

Senator ERVIN. The committee will stand in recess at this time, until 2 o'clock.

[Whereupon, at 12:10 p.m., the hearing was recessed, to reconvene at 2 p.m., this same day.]

AFTERNOON SESSION, THURSDAY, JULY 26, 1973

Senator ERVIN. The committee will come to order.

You spoke of the Kerner Commission and the Warren Commission. Both of these commissions were appointed by the President in office at the time of their appointment and both of them worked in public, did they not?

Mr. EHRLICHMAN. Yes, sir.

Senator ERVIN. And in that respect they were unlike the Plumbers who were appointed in secret and whose identity was kept secret from the American people.

Mr. EHRLICHMAN. Well, Mr. Chairman, first of all, their identity was not kept secret. It was the subject of newspaper stories.

Secondly, the reason that I cited you to the reports of those commissions was because they both discussed or so my information is, they

both discussed the use of psychiatric profiles with relation to U.S. citizens and, of course, one of them brought me to the realization that the Secret Service does conduct such an activity with relation to U.S. citizens in aid of its protection of the President and the Vice President and others in trying to determine in advance who might be threats to assassination attempts.

So it goes to the point that you raised yesterday that such a technique would be illegal with regard to U.S. citizens.

Senator ERVIN. Well, was not the existence of the Plumbers kept secret from the FBI, CIA and other investigative agencies of the Government?

Mr. EHRLICHMAN. No, sir.

Senator ERVIN. Did you tell Mr. Hoover about them?

Mr. EHRLICHMAN. Yes, sir, and we also told the Attorney General.

Senator ERVIN. Yes.

But they worked under cover of darkness and their weapon was burglary.

Mr. EHRLICHMAN. They did not work under cover of darkness, Mr. Chairman.

Senator ERVIN. Well, did they burglarize Dr. Fielding's office in the daylight or night?

Mr. EHRLICHMAN. I do not know, Mr. Chairman.

Senator ERVIN. Was that not reported to you?

Mr. EHRLICHMAN. No, sir. In point of fact, however, as I testified yesterday, I had interviews with the Secretary of Defense, Attorney General, Director of the CIA, to which I introduced Mr. Young and Mr. Krogh and they described the function of the special unit. This was in advance of their actually coming into full operation.

Senator ERVIN. Mr. Ehrlichman, are you telling me that you do not know that the burglary of the psychiatrists' office occurred in the nighttime?

Mr. EHRLICHMAN. I did not, Mr. Chairman.

Senator ERVIN. Do you think it occurred at high noon?

Mr. EHRLICHMAN. I have not heard, and I do not know this, but I have heard that it occurred on a holiday during the daytime but as I say, I do not know it.

Senator ERVIN. But anyway, you spoke in derogatory terms of Mr. Hoover.

Mr. EHRLICHMAN. No; I do not intend any derogation of Mr. Hoover.

Senator ERVIN. Well, you said he should have quit the office, that he did not know enough about surveillance, although he had spent his lifetime in it.

Mr. EHRLICHMAN. I did not say that and I would not intend to say that, Mr. Chairman.

Senator ERVIN. Well, you said he had different ideas about surveillance from what the White House had.

Mr. EHRLICHMAN. No, sir.

Senator ERVIN. Well, you said he would not cooperate with the White House.

Mr. EHRLICHMAN. What I said was that in a specific instance he had very fixed ideas about the degree to which the Bureau should cooperate in this investigation.

Senator ERVIN. Yes. He had very fixed ideas when the President appointed Tom Charles Huston to devise him a method of having American citizens spied on. Mr. Hoover had the fixed idea that they ought not to resort to burglary, that they ought not to resort to the use of undercover military agents, that they ought not to resort to virtually unlimited surveillance, and they ought not to resort to mail cover, and that was stated by Tom Charles Huston in documents put in evidence here about 15 times before the President approved those documents. So he did not cooperate.

I am going to speak for his defense beyond the grave since he is not here. I call attention to the fact that Tom Charles Huston told the White House 12 or 15 times in documents recommending burglary, recommending the use of undercover military agents, recommending mail coverage, recommending virtually unlimited surveillance, 12 or 15 times he protested against the use of those things and yet the President approved them. And here in the very letter that he wrote to the man who had charge of the surveillance or the effort to get the record of the psychiatrist, here on August 3, a month before the break-in, he said that "if he, Egil Krogh, if you concur we will proceed with interviews of all of the remaining individuals except Daniel Ellsberg."

And knowing Mr. Hoover's ideas, I think he made the exception because he did not make it a practice to interview people who were under indictment.

So there he was willing to cooperate.

And another thing, along about this time, as a Member of the U.S. Senate, I was fighting the efforts of the administration to get no-knock laws enacted, to get the detention laws enacted, to expand by Executive fiat the powers of the Subversive Activity Control Board and I was fighting against the proposition of being defender of the Department of Justice that it was all right to use undercover military agents to spy on civilians exercising their first amendment rights. And at about that time, I got a letter from J. Edgar Hoover which I also offer as evidence and he said "You" referring to me "You have indeed been one of the guardians of our liberties and protectors of our freedoms.

"All Americans owe you a debt of gratitude." I don't offer that as any praise of myself but I offer that as evidence of Mr. Hoover's devotion to the basic rights of American citizens, the rights not to be burglarized, and I think that since he can't speak for himself that his documents ought to be able to convey his attitude. I can understand having heard this testimony, about the Ellsberg matter, why you say that Mr. Hoover would not cooperate with the White House, and he was on the side of liberty.

Now, as I understand your testimony that you gave to Senator Weicker, you testified that the Plumbers attempted to get the records of the psychiatrist in order that someone of the CIA or somebody else might develop a psychiatric profile to enable President Nixon to determine for himself whether Ellsberg was some kind of a kook or was some kind of a foreign intelligence agent. Is that what you told us?

Mr. EHRLICHMAN. Well I don't think it's a question of the President determining for himself, Mr. Chairman. I think this was an effort on the part of the special unit to do as they had done in other cases subsequently, to determine where there were holes in the—either in the Federal Government itself or in the Rand Corp. or these outside units

that would permit a person like Ellsberg and his coconspirators, if there were any, to steal massive quantities of top-secret documents and turn them over to the Russians.

Senator ERVIN. Well, maybe you can, but I can't harmonize with your statement to Senator Weicker that they were not attempting to get the psychiatrist's records for the purpose of assisting in the prosecution of Mr. Ellsberg, and that they were getting them in order that the President might satisfy himself on certain points.

Mr. EHRLICHMAN. Well, the President, of course, is charged with the proper administration of the departments of the executive branch, the Defense Department, the State Department, the CIA, and the outfits like the Rand Corp. and others that contract with those Departments, and they have possession of secret documents.

Now, when you have a situation like this one, and you have information coming in from the Justice Department that this individual is involved in a conspiracy, and you have the surrounding circumstances of the delivery of these documents to a foreign embassy, it is incumbent upon the President, as the Executive of this executive branch, to satisfy himself that he has done everything possible to be sure that such a thing does not occur in the future, and in order to do that he has to be in a position to know what happened here. Now that was the process that was underway, and I think you will agree with me that that is a proper executive role.

Senator ERVIN. Well, I believe Congress set up the FBI to determine what was going on in this country, didn't it?

Mr. EHRLICHMAN. Among other things, Mr. Chairman.

Senator ERVIN. Yes. It set up the CIA to determine what was going on in respect to foreign intelligence, didn't it?

Mr. EHRLICHMAN. Yes, sir. Among other agencies.

Senator ERVIN. It set up the National Security Agency, didn't it?

Mr. EHRLICHMAN. And the Defense Intelligence Agency.

Senator ERVIN. And the Defense Intelligence Agency.

Mr. EHRLICHMAN. And a number of others.

Senator ERVIN. But it didn't set up the Plumbers, did it?

Mr. EHRLICHMAN. Of course the Congress doesn't do everything, Mr. Chairman.

Senator ERVIN. No; but Congress is the only one that has got legislative power and I don't know any law that gives the President the authority to set up what some people have called the secret police: namely, the Plumbers.

Mr. EHRLICHMAN. I think if anybody called it that they would be badly overstating the situation and we are getting now into this constitutional argument that you and Mr. Wilson engaged in yesterday, Mr. Chairman.

The fact is that the President is granted constitutional powers to make sure these departments of the executive branch work properly and when you have a mistake or when you have a shortfall or when you have a grievous raid on secret papers like this one, the President would be very remiss in his obligation if he didn't move forward on it.

Senator ERVIN. In other words, the way to cope with this thing is to set a burglar to catch a burglar.

Now, let me ask you one other question. I hope this will be my last.

Didn't it come out very early after the June 17 break-in that \$114,000

of the President's money had been deposited, at least temporarily in a bank account among the burglars, Bernard L. Barker?

Mr. EHRLICHMAN. No, sir.

Senator ERVIN. It did not?

Mr. EHRLICHMAN. No, sir.

Senator ERVIN. When did you learn that?

Mr. EHRLICHMAN. I don't know that the President's money ever showed up in this.

Senator ERVIN. It was the proceeds of campaign funds that had been given to help reelect the President, don't you know that?

Mr. EHRLICHMAN. You mean campaign contributions?

Senator ERVIN. Yes.

Mr. EHRLICHMAN. I see. Your term was not clear.

Senator ERVIN. Well, I will call it Nixon's campaign funds and maybe we can agree on that. Didn't you find out very soon after the break-in that \$114,000 of the President's campaign funds had found their way into the deposit account of Bernard L. Barker, one of the burglars caught in the Watergate?

Mr. EHRLICHMAN. Yes, sir. Without agreeing with the amount because I don't know the amount.

Senator ERVIN. Well, as a matter of fact, didn't you testify in a deposition in a civil case that on the 23d day of June, pursuant to the President's direction that you discussed this matter of these funds being routed coming out of Mexico with General Walters?

Mr. EHRLICHMAN. Yes, sir.

Senator ERVIN. Yes; and the President had talked to you about it. He asked you to do that, didn't he?

Mr. EHRLICHMAN. No; he sent word to me through Mr. Haldeman.

Senator ERVIN. Did Mr. Haldeman bring you word and tell you it came from the President, that the President wanted you to find out something about this, these Mexican checks?

Mr. EHRLICHMAN. No, sir, the thing that Mr. Haldeman said to me was that the President had asked that he and I meet with Mr. Helms and General Walters to discuss the question of whether a full all-out vigorous FBI investigation might somehow turn up and compromise some ongoing or CIA activity.

Senator ERVIN. Wasn't it the activity directed to the Mexican checks?

Mr. EHRLICHMAN. Not specifically.

Senator ERVIN. Weren't you asked about these Mexican checks in this deposition?

Mr. EHRLICHMAN. I am sure I was.

Senator ERVIN. Yes.

Mr. EHRLICHMAN. But I am sure I also answered in that deposition that that subject arose at the meeting and was not a part of the instructions that came to me through Mr. Haldeman.

Senator ERVIN. Well, anyway, you had a meeting with General Walters on the 23d day of June just 6 days after the break-in—

Mr. EHRLICHMAN. Yes, sir.

Senator ERVIN. In which it became known that \$114,000 of the Nixon campaign funds had come into Mr. Stans' office in the form of three Mexican checks or four Mexican checks and that the proceeds of those checks had been deposited in the bank accounts of a burglar in Miami, Fla.?

Mr. EHRLICHMAN. I am sure that those kind of elaborate details were not discussed.

Senator ERVIN. Well, do you know of any other campaign funds of the President, or campaign contributions that were routed into Mexico?

Mr. EHRLICHMAN. Not of my own knowledge, no, sir.

Senator ERVIN. And the President was afraid that if the FBI vigorously investigated these checks, it might interfere with the CIA?

Mr. EHRLICHMAN. The President was concerned. He told me later that the all-out FBI investigation might compromise some CIA activity in Mexico. And the way the FBI was leaking that would be the surest way for that CIA activity then to appear in the Nation's press.

Senator ERVIN. And it might also explain how come \$114,000 of the proceeds of a campaign contribution to him was found in the bank account of a burglar, might it not, if they pursued that investigation?

Mr. EHRLICHMAN. Well, Mr. Chairman, your inference is very unfair. Because in point of fact the President's instructions to the FBI were to conduct a totally unlimited, all-out, full-scale investigation of that and every other aspect of this Watergate matter and that Mr. Gray, and Mr. Gray alone was to determine the scope. That the President would not limit that scope at all.

Senator ERVIN. Well, if that was so, why did he ask whether the CIA ought to limit it?

Mr. EHRLICHMAN. He gave those instructions upon being reassured later that the CIA had no concern.

Senator ERVIN. Well, the President can remember, can't he?

Mr. EHRLICHMAN. Yes, sir.

Senator ERVIN. And he listens to the television occasionally, doesn't he?

Mr. EHRLICHMAN. Not very often.

Senator ERVIN. Well, didn't the people in the White House read and listen to television and discuss among themselves about how all these strange things were happening?

Mr. EHRLICHMAN. What strange things, Mr. Chairman?

Senator ERVIN. Such as burglars being found in the headquarters of the opposition party with Nixon campaign funds in their pockets.

Mr. EHRLICHMAN. He was well aware of what was in the news, yes, sir.

Senator ERVIN. Yes. Did you ever talk to the President about that?

Mr. EHRLICHMAN. Yes, sir.

Senator ERVIN. Did you ever suggest to him that there was something rather strange about his campaign funds being found in the pockets of burglars in the headquarters of the opposition party?

Mr. EHRLICHMAN. It was certainly not necessary for them to suggest that to him. That is the reason he ordered the FBI to do an all-out investigation.

Senator ERVIN. Well, they didn't find out much, did they?

Mr. EHRLICHMAN. Yes, sir; they found out a great deal. They conducted—in fact, Mr. Chairman, on that score, they conducted the most intensive FBI investigation that had been conducted in this country in terms of the numbers of witnesses contacted. The numbers of leaks followed out, the numbers of agents involved in the investigation, the devotion of—vigor of the Bureau of Investigation, the most intensive investigation since the Kennedy assassination.

Senator ERVIN. And they didn't find out enough to indict anybody except the original seven men, notwithstanding the fact that the transaction of the burglary ran right from the Watergate to the Committee To Re-Elect the President.

Mr. EHRLICHMAN. That certainly is not the President's fault. He turned the FBI loose.

Senator ERVIN. Well, it might be the fault of some of his aides in not insisting it be a little more vigorously done.

Mr. EHRLICHMAN. I assure you that the President—excuse me, Mr. Chairman, I assure you there was no restraint on the FBI in this investigation whatsoever to my knowledge. None whatsoever.

Senator ERVIN. Not even when you suggested to General Walters that they might have a fear it might interfere with CIA operations?

Mr. EHRLICHMAN. Let's be clear about what happened there. That meeting as you say was on about the 23d, I believe. General Walters was not asked to do anything more than have a meeting with the Director of the FBI and discuss with him any possible concerns. Now in point of fact, the CIA could not reassure us right then with regard to the President's concerns, and it was not until the 26th, I believe, yes, the 27th—let's see—it was not until the 27th of June that the CIA telephoned the FBI to say that they were satisfied that there was no CIA involvement in the Mexican aspect of this, and it was very shortly after that that the President and Mr. Gray talked, and the President instructed Mr. Gray that in view of that the FBI should go all out in its investigation. So that is the sequence of events.

Senator ERVIN. Well, the President stated in his May statement:

I considered it my responsibility to see that the Watergate investigation did not impinge adversely upon the national security area. For example, on April 18, 1973, when I learned that Mr. Hunt, a former member of the Special Investigations Unit at the White House, was to be questioned by the then Attorney General, I directed Assistant Attorney General Petersen to pursue every issue involving Watergate but to confine his investigation to Watergate and related matters and to stay out of national security matters.

Mr. EHRLICHMAN. That is entire—

Senator ERVIN. You testified that the Plumbers were dealing with national security matters.

Mr. EHRLICHMAN. Well, that is an entirely different subject from what I was just talking about. You asked me about the Plumbers or the CIA?

Senator ERVIN. Well, I have asked you about both, I think. I asked you if you did not testify that the Plumbers were dealing with national security matters.

Mr. EHRLICHMAN. Yes, sir.

Senator ERVIN. And, therefore, here is the President's own statement that he said he directed them to stay out of that.

Mr. EHRLICHMAN. Directed who to stay out of what?

Senator ERVIN. Out of national security matters, the thing that you say the Plumbers were dealing in.

Mr. EHRLICHMAN. He did not direct the FBI. He directed Henry Petersen.

Senator ERVIN. Well, Henry Petersen was the man in charge of the whole affair, was he not?

Mr. EHRLICHMAN. What whole affair, Mr. Chairman?

Senator ERVIN. The prosecution.

Mr. EHRLICHMAN. Yes, but not the investigation.

Senator ERVIN. He also said in that same statement:

I instructed Mr. Haldeman and Mr. Ehrlichman to insure that the investigation of the break-in not expose either an unrelated covert operation of the CIA or the activities of the White House investigations unit and to see that this was personally coordinated with General Walters, the Deputy Director of the CIA, and Mr. Gray of the FBI.

Mr. EHRLICHMAN. That was the purpose of the meeting on the 23d of June.

Senator ERVIN. So he says to see that the FBI did not impinge on any national security matters.

Mr. EHRLICHMAN. No, no, that is not what that says. It says any CIA investigations—

Senator ERVIN. Well, I will just read—

Mr. EHRLICHMAN [continuing]. Unrelated to the Watergate.

Senator ERVIN [continues reading].

Therefore, I instructed Mr. Haldeman and Mr. Ehrlichman to insure that the investigation of the break-in not expose either an unrelated covert operation of the CIA or the activities of the White House investigations unit.

That was the White House investigations unit, is that not an euphemism for the Plumbers?

Mr. EHRLICHMAN. I believe so.

Senator ERVIN. Yes.

Therefore, he says and he told Mr. Haldeman and Mr. Ehrlichman to see that this was personally coordinated between General Walters, the Deputy Director of the CIA and Mr. Gray of the FBI.

Mr. EHRLICHMAN. That was the purpose—

Senator ERVIN. And yet, you say Mr. Gray was not limited in any manner.

Mr. EHRLICHMAN. That was the purpose—

Senator ERVIN. And here is a direct part of the statement the President made that he instructed you and Mr. Haldeman to see that he stayed out of national security matters.

Mr. EHRLICHMAN. Would you like to hear what we did?

Senator ERVIN. It would be right interesting if we could.

Mr. EHRLICHMAN. We held a meeting with General Walters and Mr. Helms on the 23d of June, and thereafter we asked General Walters to be in touch with Mr. Gray, and then about 4 days later the CIA informed the FBI that if the FBI did an unlimited investigation it would not turn up any CIA operations and would not compromise. Mr. Gray then informed the President and the President said: "All right, Pat, I want the FBI to go all out with no strings attached."

That was on the 6th of July, Mr. Chairman.

Senator ERVIN. You know, I am reminded of the parable of the good Samaritan. In that parable there was a man who went out to travel on the road down to Jericho and he fell among thieves and they beat him and robbed him and left him wounded there lying on the road. And then the priests and Levites came down there and pretended they did not see him and walked by on the other side.

Then the good Samaritan came down and rendered him aid and suppliant and the evidence in this case tends to show thus far that all the intelligence, not all of them, but the people in charge of the Committee To Re-Elect the President, the people in charge of the commit-

tee, the Finance Committee To Re-Elect the President, and the White House aides, like the priest and the Levites walked by on the other side and pretended that this thing did not occur.

Mr. EHRLICHMAN. May I answer that question?

Senator ERVIN. Yes.

Mr. EHRLICHMAN. In point of fact——

Mr. WILSON. Are you going to use the parable?

Mr. EHRLICHMAN. I read the Bible but I do not quote it.

In point of fact, Mr. Chairman, on four different occasions the President of the United States had full-scale reports from the Attorney General about the efforts of the entire Department of Justice, the efforts of the entire Department of Justice in this, that included not only the FBI, it included the grand jury, it included the prosecutors, it included everybody who was involved in this investigation. It was followed very closely by those of us in the White House who had an interest in this matter one way or the other, Mr. Dean primarily but others of us as well. I had a meeting, for instance, with the Attorney General on the 31st of July of this year on the break-in, and got a full-scale report from him in which he said the investigation was not yet completed but that it was very clear to the entire Department of Justice that the seven people who were indicted were, in fact, the only ones implicated.

Now, the White House had said to its employees—the President had instructed that everyone was to cooperate fully in giving evidence to the FBI, and they did that.

Mr. Dean conducted his own inquiry inside the White House with regard to White House involvement, and Attorney General Kleindienst, about 3 or 4 days after the Department of Justice completed this investigation in September made a complete report to the President, the Vice President, the Cabinet and the Republican legislative leaders at a meeting which I can well recall and the Attorney General made the point at that time, in the President's presence, that this had been the most vigorous and extensive Department of Justice investigation since the assassination and that their conclusion was that the people arrested, and then known to be implicated were, in fact, the only ones involved.

Now, that had the scrutiny and interest of the people in the White House, the people in the Cabinet, and the other executive branch officials and it certainly had the full attention of the Attorney General. There was no attempt to shield our gaze and pass over on the other side.

Senator ERVIN. And notwithstanding the fact, did you ever discover that Sloan, the treasurer of the committee, at the direction of Magruder, after consultation with Stans, paid \$199,000 in cash to Liddy who masterminded the burglary?

Mr. EHRLICHMAN. Well, that is an interesting point, Mr. Chairman, because at my meeting with the Attorney General on the 31st of July he said Mr. Sloan had a version of the facts which the prosecutors had heard and which were going to be read to the grand jury, and they were. So that that was not concealed from the prosecutors, the investigators had turned it up and it was before the grand jury. This was a known quantity. Unfortunately, when the matter went to trial, the judge and the jury didn't believe Mr. Sloan.

Senator ERVIN. Well, they didn't give him a chance. They didn't indict Magruder, and the prosecuting attorneys are reported in the press to have said the evidence showed that nobody was involved except the seven men under prosecution.

Don't you know that?

Mr. EHRLICHMAN. I know, too, that they had Mr. Sloan's testimony before them. He was not believed and in point of fact, you remember in the press, that at the trial, the judge made comments which indicated that he did not believe Mr. Sloan.

Senator ERVIN. Well, it has turned out since he was telling the truth, I think rather strongly, so they certainly had his testimony that Magruder, the Deputy Director, had ordered him to pay this \$199,000 in cash out of Secretary Stan's secret fund and that Secretary Stans had told Sloan to comply with the order of Magruder in this respect after consultation with Mitchell.

Now, I can understand why they don't find out some things that are so outrageous that they don't believe a party. Didn't Mr. Sloan come up and want to tell you about this and you said to him, "I don't want to hear anything about it because if I hear anything about it I will have to take the executive privilege until after the election."

Mr. EHRLICHMAN. I don't know what it was that Mr. Sloan wanted to tell me because after we had talked for a few minutes and I had determined that he felt he had some exposure, but that he had not talked to an attorney. I told him that it would be grossly unfair of me to hear him out until he had had an opportunity to talk with an attorney and take counsel on his own situation.

Senator ERVIN. You were one of the men in the White House who stood in power next to the President, weren't you?

Mr. EHRLICHMAN. I worked for the President there.

Senator ERVIN. Yes, and when an agent, when this treasurer of the Finance Committee To Re-Elect the President came and told you he wanted to tell you about some things that troubled him you refused to listen.

Mr. EHRLICHMAN. Well, I thought I was doing that from his standpoint, Mr. Chairman.

Duke Sloan has been a young man that I have known well during the time he worked in the White House. I didn't want to see him tell me something before he had talked to counsel that later on was going to prove his undoing, and you see his wife, Debbie, also worked at the White House and was well known to my wife and me and I just didn't want to see him overreached.

Senator ERVIN. I have got to go and the time is almost up to go over there and vote.

[Recess.]

Senator ERVIN. Before I put another question, I would say that my idea is that it is up to the jury to determine whether a witness is telling the truth instead of the prosecuting attorney.

Did you not call Henry Petersen, the Assistant Attorney General of the Criminal Division, who had general supervision of this prosecution and ask him not to require former Secretary Maurice Stans to go before the grand jury?

Mr. EHRLICHMAN. Yes, Mr. Chairman. The circumstances were that the—it had come to the President's notice that Secretary Stans was going to be asked to appear before the grand jury. He asked me to determine if it would be possible for Secretary Stans to give his testimony as others had, through the device of a proceeding at the Justice Department, a deposition, so to speak, under oath, rather than to run the gauntlet at the Federal courthouse.

The President said that a man who was a former Cabinet officer and so on, should not be subjected to that kind of a situation. I talked with Mr. Dean about it and I talked with Mr. Petersen and he agreed not to do that.

Senator ERVIN. As a Democrat with a small "d," I am incapable of comprehending why a former Cabinet officer should not have to do as all other mortals and go before grand juries and so he did not go, did he?

Mr. EHRLICHMAN. He gave his testimony.

Senator ERVIN. He gave his testimony?

Mr. EHRLICHMAN. Excuse me, Mr. Chairman. He gave his testimony by deposition.

Senator ERVIN. Yes, he gave his testimony in the absence of the grand jury, did he not?

Mr. EHRLICHMAN. Apparently this was a procedure which had been established by the prosecution and a number of other people had done likewise.

Senator ERVIN. As I have observed during these hearings before, murder and stealing have occurred in all generations but they have not made murder meritorious or larceny legal.

Now, my question is. Mr. Former Secretary Stans did not go before the grand jury, did he? He gave his testimony in his office, did he not?

Mr. EHRLICHMAN. No, sir—well, I do not know where he gave it.

Senator ERVIN. Well, he gave his testimony in the absence of the grand jury?

Mr. EHRLICHMAN. Yes, I believe he gave it at the Department of Justice.

Senator ERVIN. Yes. And by that method, there was nobody there to ask him any questions except the prosecuting attorney who held office at the pleasure of the President. Is that not so?

Mr. EHRLICHMAN. Well, I do not know who was present, Mr. Chairman.

Senator ERVIN. Well, you know none of the grand jurors—there were 23 grand jurors, I believe under the Federal system, none of the grand jurors were there, were they?

Mr. EHRLICHMAN. I do not believe so.

Senator ERVIN. So this was a process—

Mr. EHRLICHMAN. Unless the foreman was there, and I do not know that.

Senator ERVIN. This was a process because Secretary Stans, I guess—Shakespeare said about Ceasar what meat our Ceasar eats had grown so great but he had eaten such meat that made him so great that he did not have to go before the grand jury like ordinary mortals, and that procedure made it certain that no inquisitive grand juror could ask this man who had had charge of the financing of the campaign, any embarrassing questions, did he not?

Mr. EHRLICHMAN. Well, Mr. Chairman, you cannot establish by my testimony who was present because I do not know.

Senator ERVIN. Well, at the instance of the President of the United States, you requested the Assistant Attorney General, Mr. Petersen, to spare Mr. Stans from the ordeal that other people are supposed to go through, and go before the grand jury, and have his evidence taken in a manner in which no inquisitive grand juror would have any possibility of asking an embarrassing question of the man who ought to have known more than anybody else about the financing of the campaign; did you not?

Mr. EHRLICHMAN. I am sure that that is a procedure that was followed in other instances, Mr. Chairman, and I think the President had in mind a good deal less the question of what questions would be asked Mr. Stans and a good deal more of the fact of when one goes to that particular grand jury you run a gantlet of cameramen and newspaper people down the hall and up the stairs and it is a very arduous thing before you ever get into the room.

Senator ERVIN. You spare a man from that. You also spare him from any possible embarrassing questions from any one or more of 23 grand jurors.

Now, anybody else who had this special red-carpet treatment other than some other White House officials?

Mr. EHRLICHMAN. I have no idea, Mr. Chairman.

Senator ERVIN. Well, do you not know that several White House officials were given this special treatment?

Mr. EHRLICHMAN. I heard that in testimony here but I have no personal knowledge.

Senator ERVIN. Do you not think that that is contrary to the principle that all men are supposed to stand equal before the law?

Mr. EHRLICHMAN. I can assure you that I did not have that treatment.

Senator ERVIN. Well, I can understand why you could not get as far as you should have gotten in this if you kept witnesses who should have known the most about it away from the inquiring questions of grand jurors.

Thank you very much.

Senator Baker.

Senator BAKER. Thank you, Mr. Chairman.

Mr. Ehrlichman, do you have a copy of exhibit 91, which is a memorandum from David Young to John Ehrlichman dated August 26, 1971, page 2?

Mr. EHRLICHMAN. I believe we do somewhere.

Senator BAKER. Will counsel supply a copy to the witness?

Mr. EHRLICHMAN. Well, we had a copy but I am sorry I don't have it right at my fingertip.

Senator BAKER. Also, if you have a copy, would you also get a copy of the President's statement of May 22, 1971?

Mr. EHRLICHMAN. I don't have that with us.

Senator BAKER. Would the staff please supply a copy of that document?

Mr. EHRLICHMAN. I have the other document here, Senator.

Mr. WILSON. Mr. Strickler, my partner, has a trial uptown and he didn't come back this afternoon and that is the reason we are bereft of these exhibits.

Senator BAKER. I also wanted to draw your attention in this brief examination to exhibit No. 3 which is a memorandum for you from Mr. Krogh and Mr. Young, dated August 11, 1971, and I would like to stop long enough—

Mr. EHRLICHMAN. That I have.

Senator BAKER [continuing]. For staff to supply any of the missing documents. Do you have exhibit 91?

Mr. EHRLICHMAN. Yes, I just need the President's statement of the 21st if that is what you are referring to.

Senator BAKER. All right, fine. The May 22 statement of the President.

Do you have a mimeographed copy so that we can make the pages correspond?

Now, is that the mimeographed copy?

Mr. EHRLICHMAN. That is the Congressional Record?

Senator BAKER. No; it is not. I would like you to do that, if you will, please.

Mr. Ehrlichman, I am not trying to imply anything. I am not trying to put you on the spot. I am not trying to ask any unfair question. I simply must say that, having heard your testimony for some days and having looked at these documents and the President's statement, certain questions have occurred to me that appear to be unanswered or partially unanswered or appear to be incomplete.

I would address your attention first to the August 1, 1971, document from Krogh and Young to Ehrlichman which I believe is marked according to my copy as exhibit 3 from executive session July, I believe, 17, 1973.

On page 3 of that the paragraphs jump from 4 to 6. What happened to paragraph 5, if you know and what did it say?

Mr. EHRLICHMAN. Well, I can remember what paragraph 5 said. I don't know who excised this. It deals with an extremely sensitive subject relating to another country. I don't know why it isn't in here.

Senator BAKER. Are you in a position to supply it now for the record?

Mr. EHRLICHMAN. I can, I am not sure you want me to.

Senator BAKER. Counsel for the committee, majority counsel, I believe has something he wants to say on the subject.

Mr. DASH. I just wanted to say that when this was given to us on subpoena by Mr. Young's counselor, Mr. Young excised it on the ground that it contained national security matters involving a foreign country. That was his statement to the committee.

Senator BAKER. We are in the most troubled of all troubled waters here. Maybe I can approach it obliquely.

Can you give the committee some information as to whether or not excised paragraph 5, which I gather now the committee does have—

Mr. DASH. No; it was never given to us. We got that document just as it now looks.

Senator BAKER. All right. Whether or not excised, paragraph 5, which would appear to deal, I gather, in intelligence about a foreign country, does or does not have any bearing on the action or conduct

of principal staff of the White House subsequent to the Watergate break-in?

Mr. EHRLICHMAN. No, sir.

Senator BAKER. Does it have to do with the national security matters that the President refers to repeatedly in his statement of May 22 as being interwoven?

Mr. EHRLICHMAN. It's germane to the Pentagon Papers situation.

Senator BAKER. Are you at liberty to supply that or is this one of the matters where—

Mr. EHRLICHMAN. I don't think I am. I take it that that would not be one of the items exempted from the executive privilege exceptions, so to speak. I think this is a matter which somebody ought to get from the White House if, in fact, it's going to come from somewhere. I would probably be violating two or three statutes if I disclosed at this point.

Senator BAKER. Is it of significant importance?

Mr. EHRLICHMAN. I don't think it is, but that is a matter of personal opinion. It certainly does not bear on the Watergate. It is tangentially related to the special unit investigation of or, yes, investigation of the Pentagon Papers matter. But it is very tangential, and I think very sensitive.

Senator BAKER. All right.

Does it have something to do with the characterization that the President placed on the situation in the third paragraph on the first page of his May 22d statement, which is very short and I will read it: "Important national security operations which themselves had no connection with Watergate have become entangled in the case."

Mr. EHRLICHMAN. It could. I think it would fall within that paragraph.

Senator BAKER. Do you know whether it does or not?

Mr. EHRLICHMAN. Well, I would say it does. I would say it does, and I can say this: It's one of those collateral matters, Senator, that would be interesting and titillating and whatnot, but it would cause more mischief than the good would be produced from the disclosure. I am perfectly content under appropriate safeguards and permission or whatnot to talk to the committee about it in executive session or whatever arrangements you would like to make provided I have the leave of the White House to do so. But—

Senator BAKER. You see what I am driving for, Mr. Ehrlichman?

Mr. EHRLICHMAN. Yes, sir.

Senator BAKER. If the President does in fact try to make a major case for the idea that there was a commingling of Watergate and non-Watergate related activity, and that he took measures after the break-in designated frequently in this record as the coverup, to protect non-Watergate related activity.

Mr. EHRLICHMAN. This would be one of those.

Senator BAKER. If that would be so then we need to know about it.

Mr. EHRLICHMAN. There would be that kind of a situation where in thinking about it, say, the FBI making an investigation of this particular matter referred to in this paragraph, and then that somehow leaking it would be very unfortunate.

Senator BAKER. Right.

Are you using that as an example or—

Mr. EHRLICHMAN. Sure, that is a hypothetical—

Senator BAKER. That is not a characterization of the missing paragraph?

Mr. EHRLICHMAN. Oh, no, no, indeed.

Senator BAKER. I understand that you would be willing to discuss this fully with the committee in executive session provided you had leave from the White House to do so.

Mr. EHRLICHMAN. Absolutely.

Senator BAKER. Mr. Chairman, I ask unanimous consent that staff propound such a request to the White House so that we might pursue the matter further.

Senator ERVIN. Without objection that will be done.

Senator BAKER. I invite your attention to exhibit No. 91, Mr. Ehrlichman, a memorandum from Mr. Young to you dated August 26, 1971, the middle of page 2. It is not very long and I will read it, too:

It may well be that although Ellsberg is guilty of the crimes with which he is charged, he did not in fact turn the papers over to the New York Times. The Defense Department's analysis of the printed material may even show that Ellsberg did not have some of the papers which the New York Times printed.

And this is the part I would like to draw your attention to:

Furthermore, the whole distribution network may be the work of still another and even larger network.

That didn't mean much to me on first reading but in light of other circumstances that have come to my attention, and in light of the missing paragraph 5, in light of the repeated references by the President in his May 22, 1973, statement to the intermingling of affairs, my curiosity was greatly heightened. Now, this was a memorandum to you?

Do you know what they were talking about?

Mr. EHRLICHMAN. I know that there was a very respectable—let me shorten it. Yes, sir, that is the answer to the question, I do know.

Senator BAKER. Can you tell us?

Mr. EHRLICHMAN. I can tell you—your question related to paragraph 5 and I take it we would pass any reference to that.

The reference in the other exhibit was to a respectable body of opinion among the investigators in the Government: (1) That Daniel Ellsberg may not have been the man to turn the stuff over to the New York Times, and (2) there were a number of other people involved either in association with him or operating separately.

I saw just enough of the investigation material to persuade me that there are indeed other people involved in that case who have never been indicted.

Senator BAKER. Who has knowledge of that?

Mr. EHRLICHMAN. The Department of Justice has. Mr. Mardian, who was the Assistant Attorney General in charge of that prosecution does. I take it Henry Petersen does. I am not sure that either Mr. Krogh or Mr. Young do on any kind of detailed basis. But the people who made the prosecution decisions in the case which have been the Attorney General and the Assistant Attorney General or the two Assistant Attorneys General.

Senator BAKER. I rather think your question is responsive and may very well be entirely accurate but I get the feeling there is something else there.

Mr. EHRLICHMAN. Well, there undoubtedly is and I don't know the full details of it.

Senator BAKER. I am talking about what you know, Mr. Ehrlichman.

Mr. EHRLICHMAN. I am tiptoeing just a little bit, Senator, because, frankly, I don't want to say somebody's name or advance an innuendo of any kind that would be unfair to anybody.

Senator BAKER. No, I don't want you to make a charge here that somebody may have been involved in the Ellsberg situation.

Mr. EHRLICHMAN. Right.

Senator BAKER. Or the psychiatrist break-in or the Pentagon Papers. I specifically do not want that.

What I do want to know is the breadth and range of your information as to that event or other security problems that may have had some bearing on the contentions of the President in his May 22 statement.

Mr. EHRLICHMAN. I think the statement of May 22 referred less to that reference, that is this distribution network and others in the coconspiracy, than it did to other activities of the special unit or other problems that the special unit addressed itself to.

Senator BAKER. Other than the Ellsberg matter?

Mr. EHRLICHMAN. Yes.

Senator BAKER. What?

Mr. EHRLICHMAN. I mentioned two that are in the public domain, the SALT leak and the India-Russia leak, that is not—

Senator BAKER. Indo-Pakistan situation?

Mr. EHRLICHMAN. No, this had to do with a treaty between Russia and India and it compromised a CIA document which appeared in the New York Times and other newspapers.

Senator BAKER. What other examples?

Mr. EHRLICHMAN. That is as far as I can go because that is all in the public domain and I am under an express injunction from Mr. Buzhardt that executive privilege has been invoked as to the other matters.

Senator BAKER. Are you willing to discuss these matters by leave of the White House in executive session?

Mr. EHRLICHMAN. If—I am in a situation where it isn't a question of my willingness. I am, you know, in a situation where I am willing to answer any proper question but I am also in a situation where certain subjects of this kind of a sensitive national security nature are simply not mine to give.

Mr. WILSON. Mr. Vice Chairman, this has already been considered by Mr. Buzhardt, and with respect to a 1971 investigation, I guess the witness will fix these in this area without further definition, and without my having a single knowledge of a fact about it. I have a letter from Mr. Buzhardt.

Senator BAKER. I am sorry, Mr. Wilson, I cannot hear you. Would you move your microphone?

Mr. WILSON. I am sorry, sir, Shall I begin again?

Senator BAKER. No, I think that is not necessary. I got the first part but it was trailing off badly.

Mr. WILSON. With respect to an anonymously stated investigation in 1971, which is perhaps one of the four instances of the Plumbers' activities, I hold a letter from Mr. Buzhardt dated July 23, directing us to claim privilege pursuant to the Constitution doctrine of the separation of powers.

Senator BAKER. On what?

Mr. WILSON. I am very happy to pass this up.

Senator BAKER. No, no; I accept your word for it, but on what? Does it specify on what?

Mr. WILSON. Yes; it is identified only in here with regard to what we know to be a fourth instance of the activities of the Plumbers.

Senator BAKER. A fourth instance?

Mr. WILSON. Yes.

Senator BAKER. There were three instances described by the President in his statement of May 22, as I recall.

Mr. WILSON. It is possible, sir, that I am a little confused and that the third and fourth instances may merge into a single instance. One would be the Pentagon Papers, which is in the public domain. The second is the SALT, there has been some reference here to the compromising of the CIA with respect to an Indian matter. I do not know——

Senator BAKER. With respect to an Indian matter?

Mr. WILSON. Yes——

Mr. EHRLICHMAN. This is with respect to the India-Russia Treaty that I just mentioned.

Mr. WILSON. If the reference in here to a 1971 investigation overlaps the third or is an independent fourth, I do not know, sir.

Senator BAKER. Mr. Ehrlichman is shaking his head no, to the former and yes, to the latter. It does not overlap the fourth function. Can you tell us what the fourth function is?

Mr. EHRLICHMAN. Under this letter I cannot, sir.

Senator BAKER. Would you tell us in executive session if you have permission of the White House?

Mr. WILSON. Can I answer that?

Senator BAKER. Yes, sir.

Mr. WILSON. We already have an admission against it, admonition against us and I would believe sir, of course, if you will ask him we will go back and submit it but we have already a direction to claim the privilege with respect to that item. That is what I hold in my hand, sir.

Senator BAKER. Do you represent, Mr. Ehrlichman, this to be a matter of extreme national importance in terms of national security?

Mr. EHRLICHMAN. Yes, sir.

Senator BAKER. Can you tell me whether or not the fourth item Mr. Wilson referred to has to do with the commingling of Watergate and other security matters?

Mr. EHRLICHMAN. Not inherently, Senator. The concern here, I think, would be that, just as we have this situation now, an inquiry into the Watergate leads to an inquiry into this matter which, in turn, would compromise it.

Senator BAKER. Mr. Ehrlichman. I will not take much longer. Let me refer you to a few pages in the President's statement, and incidentally, this is not a waste of time. This is a terribly important matter because on the one hand, you have an allegation by the President that national security matters accounted for part of his conduct subsequent to Watergate. On the other hand, we have examples of wiretapping, of the Ellsberg break-in and other things, and very frankly, I am not sure you have entirely convinced all of the committee

that these are matters of extraordinary national importance that they fit the description that the President makes in his statement of May 22. I will reserve judgment on that until later but the fact that there is a missing paragraph in one exhibit, the fact that there is reference to another matter, the fact that Mr. Wilson mentions another fourth category of conduct which, as far as I know, we never knew about, if those facts are true—whether they are inimical to the President's best interest or supportive of his best interest is not important to this inquiry at this moment—it makes the record obviously incomplete.

Now, I need to know how we go about testing the several pieces made by the President on the question of national security. The press has carried the account that the whole Watergate affair is cloaked in a shield of national security, and to be very frank with you, the President's statement of May 22 could be entirely correct in every respect, and I suppose we all assume that it is, but it is still so general and subject to so many interpretations that it cannot stand unaided the close scrutiny that this committee is trying to undertake.

Now, I want to know, on whatever basis I can find out, what those other considerations were. I do not want to know them in a way that, as a citizen of the United States, I think they might jeopardize the safety or the future of my Nation, but I have got a delicate balancing job on my hands here trying to find out and trying to evaluate whether they are in fact of that importance. I am sort of at a loss as to how I do that.

Let me put one other item into the equation. You spoke of, or I believe Mr. Wilson spoke of, a 1971 report. I want to put—

Mr. WILSON. Investigation.

Senator BAKER. Sir?

Mr. WILSON. Investigation.

Senator BAKER. I want to put a specific question to you. Whether or not any of these functions had to do with anything related to, say, the Indo-Pakistani War.

Mr. EHRLICHMAN. Well, you see, whether I answer yes or no, Senator, I have added to it coming into the public domain, and I think I am precluded from making a fair response to your question because we could sit here and by 20 questions eliminate a number of alternatives so that it would be—it would become more readily apparent. Let me say if you and I were sitting across a table and we did not have all this it would not be nearly the problem that it is, but—

Senator BAKER. Are you telling me, Mr. Ehrlichman, there are some matters of such grave national security importance that you would in effect bite the bullet and take the examination, interrogation that you have gone through so far?

Mr. EHRLICHMAN. I am not sure I understand your question, Senator.

Senator BAKER. Well, my question is this: If, in fact, the conduct of the White House and its major staff after the Watergate inquiry was based on national security considerations, just assume for the moment that there was some element of an obstruction of the investigation of the Watergate situation because of some national security issue. How great must that national security issue be to take all the punishment that an administration and witnesses have taken?

Mr. EHRLICHMAN. Well—

Senator BAKER. What I am asking you is, is it that important or am I playing games?

Mr. EHRLICHMAN. In my opinion it is that important, Senator.

Mr. WILSON. Mr. Vice Chairman, I believe it would be well if you would permit me to read this letter to you because it answers some of your questions.

Senator BAKER. I would like that very much.

Mr. WILSON. Then, of course, with the permission of yourself and the chairman, it may be put in the record. It is dated the 23d of July and it is addressed to me and it is signed by Mr. Buzhardt, as special counsel to the President.

This is in reference to your inquiry concerning the extent of the President's waiver of executive privilege in connection with testimony before the Senate Select Committee on Presidential Campaign Activities.

Am I in close enough for everybody to hear me?

Senator BAKER. Yes, sir, we can hear fine.

Mr. WILSON [continuing].

As you know the President said in his statement on May 22, 1973: "Executive privilege will not be invoked as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct in matters presently under investigation, including the Watergate affair and the alleged coverup." This is the total extent to which the President waived executive privilege.

The 1971 investigation about which you inquired was in no way related to the Watergate affair, the alleged coverup, or to any Presidential election. This matter does involve most sensitive national security matters, the public disclosure of which would cause damage to the national security.

Accordingly, if your clients, Mr. John F. Ehrlichman or Mr. Haldeman, are interrogated about this particular investigation, the President has requested that you inform the committee that your clients have been instructed by the President to decline to give testimony concerning this particular investigation, and that the President, in so instructing your clients, is doing so pursuant to the constitutional doctrine of separation of powers.

Senator BAKER. Do I understand, Mr. Wilson, this adverts only to the 1971 investigation?

Mr. WILSON. To my knowledge it does and I have no idea what that is. This is the key to me. May I pass this to the Chair and I would like to pass up the original and keep the Xerox myself in my unselfishness. [Laughter.]

Senator BAKER. I am not going to press that any further at this point. I intend to pursue it a little further a little later in maybe a little different way.

Mr. EHRLICHMAN. Senator, could I extend my remarks in response to your general question with regard—

Senator BAKER. Yes, sir.

Mr. EHRLICHMAN. With regard to the legitimacy of the President's concern with regard to these various national security problems.

The chairman and others have questioned me about the President's concern about the CIA possibly being involved in this, which was, as you know, of limited concern dating from the—about the 20th of June to about the 6th or 7th of July. I would ask the committee to have its staff secure a document dated July 6, 1972, from General Walters to the acting Director of the Federal Bureau of Investigation relating to that subject. I don't think I should testify regarding the content of that in any degree of particularity, I think the document speaks for itself, and will go to the general question which the chair-

man will put and I think will satisfy the committee with regard to the authenticity and the genuineness of the President's concern on that subject.

Senator BAKER. Do you suggest that as an aid to my general inquiry?

Mr. EHRLICHMAN. Yes, sir.

Senator BAKER. Mr. Ehrlichman, I am not trying to advise you or to advise the President, but I think it is urgently important that this committee weigh and the executive department weigh not only the importance of national security versus other considerations, but that we weigh as well the relative importance of national security to domestic security, that is the welfare of this Nation, and this undertaking is no small task.

Mr. EHRLICHMAN. I understand it, if this, Senator—

Senator BAKER. I need to know whether or not we are playing games or whether in fact this was a legitimate area of inquiry with the committee or am I being stopped?

Mr. EHRLICHMAN. We are not playing games.

Senator BAKER. OK. I will stand on that.

Mr. EHRLICHMAN. Obviously I am not in any position to deliver for you under the circumstances, but it seems to me that the chairman, the vice chairman, the committee—or the entire committee, can find someone in the executive branch to sit down on a confidential basis and talk through this one particular matter or if they will tell you that I can do it I would be happy to do it on that basis, but it is a—simply a matter which—in the scale which you have just described heavily weighs.

Senator BAKER. Which way?

Mr. EHRLICHMAN. In favor of national security, in my opinion.

Now, you may disagree with me but I don't think you will.

Senator BAKER. Well, Mr. Ehrlichman. I am going to pursue this. I am not quite sure how but you see the dilemma the committee is in?

Mr. EHRLICHMAN. Sure.

Senator BAKER. We have on one hand rather elliptical or not complete allegations of national security concern of such grave importance that the risk is run that it might be misunderstood, that the allegations and claims of national security considerations are suspect in the minds of some.

Mr. EHRLICHMAN. I understand.

Senator BAKER. And on the other hand, the concern that if there are in fact vital national interests involved we have an obligation as Senators and as citizens to find it out the right way. But we are left right now in an untenable position. We have got to press this further in conjunction with the tapes, in conjunction with the documents, in conjunction with the President's May 22 statement, in conjunction with a dozen other things I could name. We need to know what factors were taken into account to verify or invalidate the claim of national security which itself is in some quarter suspect, and I, for one, hope that we can add that to the long list of things on which I believe the committee needs to make a definitive statement.

Now, I have lectured you more than I have questioned you, but I think you understand the dimensions of my concern.

Mr. EHRLICHMAN. I certainly do.

Senator BAKER. And I think you understand there is information available that heightens our curiosity, or at least mine, about this.

Mr. WILSON. Mr. Vice Chairman?

Senator BAKER. Yes, sir.

Mr. WILSON. With respect to the responsibility I have with respect to this matter, I am perfectly willing to go back to Mr. Buzhardt with a message, if you will give it to me, that in executive session, and I want to be very careful not to offend anybody, but the leaks out of your committee investigations have been colossal.

Senator BAKER. We probably have a track record for that, Mr. Wilson.

Mr. WILSON. And whole pages of interviews with my clients have been quoted verbatim, and the staff denies, and I believe them that they have been the sources of that.

Now, if I can say to Mr. Buzhardt that we would have an executive session with the seven responsible Senators of this committee, and we would have a meeting with no one else, and we would have an absolute assurance from all seven of you that the words we give you will not go out of the—away from the seven of you—I will go back to Mr. Buzhardt and seek to get this opened up.

Senator BAKER. Do you have this information yourself?

Mr. WILSON. No; I do not, sir.

Senator BAKER. Does Mr. Buzhardt have it?

Mr. WILSON. I don't know. I assume he has because he has spoken about it. I said to you earlier, I want to be very careful about it. I do not know what this 1971 investigation is about. I take him literally from his own document. I haven't sought to find out but I certainly will go back, if the chairman and the six other members of this committee will give me their own assurance that we can meet with you in camera, and what we tell you will go no further, I will recommend to Mr. Buzhardt that we be permitted to do so.

Senator BAKER. Mr. Wilson, for my part I intend to take under advisement the whole thing and I will make an independent judgment on how I will proceed taking fully into account your very generous suggestion. But I want to conclude just by saying this: Obviously, the point we have been discussing is not the whole Watergate situation. Obviously, it has nothing to do or very likely has nothing to do with the Watergate break-in. It probably doesn't have anything to do with a lot of things and a lot of them have been truly shocking, at least to the view of many people.

But it may or may not have something to do with a material allegation of the President in his May 22 statement. If there is information available that validates it, it is important to know. If there is information which tends to discredit it, we sure need to know that, and I reserve the right to pursue that further, Mr. Chairman.

Mr. WILSON. I will not make any inquiry of Mr. Buzhardt until I hear from you, sir.

Senator BAKER. Thank you, sir.

Senator ERVIN. Well the next Senator, I believe will be Senator Talmadge, and there is a vote on now and I think we might as well go and vote.

[Recess.]

Senator ERVIN. The committee will come to order.

Senator Talmadge is recognized.

Senator TALMADGE. Mr. Ehrlichman—we will wait until your counsel arrives.

Mr. EHRLICHMAN. Thank you Senator.

Senator TALMADGE. Mr. Ehrlichman—

Mr. WILSON. Thank you, Senator Talmadge, excuse me for being late.

Senator TALMADGE. Mr. Ehrlichman, Lt. Gen. Walters, then Deputy Director of the Central Intelligence Agency, stated that he met with Mr. Gray on July 6, 1972. Mr. Gray was then Director of the Federal Bureau of Investigation. According to Mr. Walters, Gray told him that he had told you that he could not possibly get the FBI to suppress the investigation and that he told you he would prefer to resign, is that true?

Mr. EHRLICHMAN. I do not recall any conversation with Mr. Gray in which he threatened to resign or stated that he would resign, Senator. I had had several conversations with Mr. Gray between the Watergate break-in and that date. The principal subject of those conversations, as I recall, was the continuing problem of leaks in the FBI but there were also conversations relating to the scope of the investigation. He had had a conversation, as I recall, with General Walters prior to that date, and I believe it was on that date that the President instructed Director Gray to go forward with full speed on the FBI investigation without any limitation.

Could I just check my calendar very quickly and see?

Senator TALMADGE. Certainly.

Mr. EHRLICHMAN. Which date was that? Well, it was on the 6th of July that Mr. Gray had the definitive conversation with the President on the telephone, in which the President instructed him to go forward without limitation on the investigation.

Senator TALMADGE. I was not asking you what the President told him. I was asking what you told him.

Mr. EHRLICHMAN. I understand. I certainly had no occasion to tell Mr. Gray to the contrary on that date, nor—

Senator TALMADGE. Did you ever at any time approach Mr. Gray with an idea of getting the FBI to suppress the investigation?

Mr. EHRLICHMAN. No, sir.

Senator TALMADGE. You did not?

Mr. EHRLICHMAN. No, sir.

Senator TALMADGE. Mr. Gray will be a witness before this committee at a later date. In order to refresh your memory, I want to read a memorandum that was sent to the Appropriations Committee from the Deputy Director of the Central Intelligence Agency. This memo is dated July 6, 1972, and I am quoting now, Lt. Gen. Vernon G. Walters—and I quote:

“He said,” and he refers to Mr. Gray, “That he fully understood this. He himself had told Ehrlichman and Haldeman that he could not possibly suppress the investigation of this matter.”

Do you think General Walters is an honorable man, do you not?

Mr. EHRLICHMAN. I know General Walters and I believe him to be such. If I can comment on that—

Senator TALMADGE. There is another one and then I will ask you to comment on both statements.

Mr. EHRLICHMAN. Thank you.

Senator TALMADGE. The same memo still referring to Mr. Gray :

Gray thanked me for my frankness and said this opened the way for fruitful cooperation between us. He would be frank with me, too. He could not suppress this investigation with the FBI. He had told Kleindienst this, he had told Ehrlichman and Haldeman that he would prefer to resign.

Would you comment on that ?

Mr. EHRLICHMAN. Yes, sir, I wonder if I might see a copy of that, if you have no objection.

Senator TALMADGE. Certainly.

Mr. EHRLICHMAN. And the reason that I would like to see it is that I do not believe, if that is General Walters' memo or memorandum of conversation that there is anything in it which asserts that I ever asked Mr. Gray to suppress the investigation.

Senator TALMADGE. I wondered why he would volunteer mentioning the fact that he had told you if you had not asked him.

Mr. EHRLICHMAN. For the simple reason that following our meeting with Director Helms and General Walters on the 23d of June he had a series of conversations with General Walters, and the subject of those conversations, as I understand it, was a question of whether or not the FBI could press forward with its investigation, particularly of the Mexican money without compromising some CIA operation, and Mr. Gray informed me, as he informed the President, that he could not possibly conduct his Watergate investigation without looking into that aspect of it.

Senator TALMADGE. You stated also, I believe, that Mr. Gray had a conversation with the President on that same date, the 6th day of July, did you not ?

Mr. EHRLICHMAN. Yes, sir.

Senator TALMADGE. Isn't it a fact that at that time Mr. Gray told the President of the United States that "Persons close to him were going to wound him."

Mr. EHRLICHMAN. I, of course, did not overhear the conversation.

Senator TALMADGE. You know that to be a fact, do you not ?

Mr. EHRLICHMAN. My report on the conversation of that came from the President. He recounted to me what I know about the conversation and that certainly was not a part of it.

The President expressed the view to me, shortly after that telephone call.

Senator TALMADGE. I think Mr. Gray is going to testify to that at a later date, and if Mr. Gray swore under oath before this committee that he told the President that, would you state that Mr. Gray was lying ?

Mr. EHRLICHMAN. Well, I say, I didn't hear the conversation, Senator, and I don't know what the conversation was, whether that was in there or not. Nor do I know to whom he was referring. But the point that the President made to me on the 6th of July on that subject was that he had grave concern about whether or not the CIA had made the proper judgment in telling Mr. Gray that they would not in any way have this operation compromised by a full FBI investigation, but since they had done so, then the FBI should go ahead and the chips should fall where they may.

Now I cited to Senator Baker a few minutes ago a communication from the CIA to the FBI bearing that same date, and I hope you will have an opportunity to read that and to see——

Senator TALMADGE. I don't want you to get into any area of national security that might compromise this country in any way whatever.

Mr. EHRLICHMAN. Yes, sir. Well, I simply——

Senator TALMADGE. Nor does this committee want it, certainly not in public session.

Mr. EHRLICHMAN. I see no reason why we need to discuss the contents at all but I would just like to call at the point in the record to call the attention of the members of the committee to that letter.

Senator TALMADGE. That letter as I understand it, relates to a wholly different matter. What General Walters was talking about was the Watergate burglary as I understand it.

Mr. EHRLICHMAN. No, sir. As a matter of fact, the final two or three paragraphs relate to this very subject matter and it's important, I think to note several things in there: The first is the date that the CIA finally determined whether or not there would be CIA exposure from an FBI investigation, and the date that they sent that information to the FBI, and some of the other circumstances which would put a reasonable man on inquiry as to whether or not there might be CIA involvement not only in some of the peripheral things but in the break-in itself.

Senator TALMADGE. In order that this record might be complete, Mr. Chairman, I would ask at this point that this memorandum from Lt. Gen. Walters, dated July 6, I believe, be inserted in full in the record at this point.

Mr. EHRLICHMAN. Could I ask, Senator, as a matter of personal privilege, perhaps, that instead of a mere excerpt being included that the full statement be included. Thank you very much.

Senator TALMADGE. The full statement.

Any objection, Mr. Chairman?

Senator ERVIN. None whatsoever.

Senator TALMADGE. I thank the Chair.

Senator ERVIN. The exhibit will be received as such and an appropriate number will be given.

[The document referred to was marked exhibit No. 97.*]

Senator TALMADGE. The White House through Mr. Buzhardt has sent this committee a memorandum on the substance of Mr. Dean's conversations, phone calls with the President. It also states that on March 30, 1973, the President directed you to investigate the whole affair. Is that correct?

Mr. EHRLICHMAN. Well, I don't know if investigation would be the proper word. He asked me to be in a position to advise him on the law involved and as many of the facts as I will be able to adduce quickly.

Senator TALMADGE. I will read the White House statement of March 30: "After it became obvious that Dean would write no report, the President directed Ehrlichman to investigate."

Is that a fair statement?

Mr. EHRLICHMAN. Well, I have tried to avoid the word "investigation" as to what I did, because I simply did not have either the time or the facility to conduct what I would call an investigation in a full sense.

Senator TALMADGE. Then the answer is you did not investigate.

*See p. 2913.

Mr. EHRLICHMAN. I conducted an inquiry, I talked to a number of people who had knowledge of the matter. I formed a hypothesis but I by no means formed what I would call hard evidentiary conclusions.

Senator TALMADGE. Did you report to the President?

Mr. EHRLICHMAN. Yes, sir.

Senator TALMADGE. When?

Mr. EHRLICHMAN. On the—excuse me—on the morning of April 14.

Senator TALMADGE. What did you tell him?

Mr. EHRLICHMAN. I told him substantially what these various people had told me more in a narrative form. I told him that I felt that the matter was coming to a head through the fact that both the prosecutor and the Assistant Attorney General were making progress in the case, and that it looked to me like a serious involvement of Mr. Dean and other White House people in this matter.

Senator TALMADGE. Now, let's move to another point.

A White House member also on the meeting between John Dean and the President on March 21, 1973, says that Dean told the President, and I quote:

Dean still said no prior June 17 White House knowledge, that Magruder probably knew, that Mitchell possibly knew, that Strachan probably knew, that Haldeman had possibly seen the prints of the wiretaps through Strachan, that Ehrlichman was vulnerable because of his approval of Kalmbach's fundraising efforts.

So even though the White House memo mentions you as probably being involved or implicated in this affair, and that information was received on March 21, 1973, isn't it rather strange that you, 9 days later, would be appointed to investigate yourself?

Mr. EHRLICHMAN. It depends, I think, Senator, on what Mr. Dean actually told the President. If he told the President what he told me about that contention, I don't think it would be altogether strange because what he told me was that Mr. Haldeman and I were not indictable but that each of us had apparent involvement, my apparent involvement being the fact that he had come to me for an OK to have Mr. Kalmbach recruited to raise this money.

Now, he said that is not a serious problem except that it looks bad. He said at that time, and this was right about March 21 or some place in that area, to me that this did not constitute an indictable or criminal offense.

Now, if he told the President the same thing, then I guess it is—

Senator TALMADGE. That is what Dean told you, you don't know what he told the President.

Mr. EHRLICHMAN. No, I do not.

Senator TALMADGE. Now, to move on to another matter, you taped a conversation with Mr. Kleindienst on March 28, 1973.

Did you tell Mr. Kleindienst that you were doing so?

Mr. EHRLICHMAN. No, sir.

Senator TALMADGE. During this conversation did Mr. Kleindienst say, "Sirica is really lousing things up."

Mr. EHRLICHMAN. As I recall from looking at that transcript, yes, sir, he did.

Senator TALMADGE. What did he mean by that statement?

Mr. EHRLICHMAN. Well, I would have to look at the whole, at the whole transcript in order to get the sense of it. This was a call in which I had a list of questions that I was to ask Mr. Kleindienst, that I had

taken from the President, and I have forgotten how we got into the——

Senator TALMADGE. Sirica is the U.S. district judge trying these Watergate cases. is he not?

Mr. EHRLICHMAN. Yes, sir. What page is that on—oh, here it is, I find it. I asked what the progress of the—in effect the status of the—judicial process was at that point in time, which is one of the things that I was requested to ask, and the question was “What progress are they making right now? Have you had a reading on it?”

And then he said, “Because of the judge’s sentencing procedures that that process had been delayed.”

And then he made the comment that you quoted and then he went on this same paragraph and said that he would check on the status and give me the answer to the question that I was directed to ask him as soon as he found out. But that was an attempt to bring the President up to date, the President had asked me to impart to him a number of specific questions about whether or not the Department of Justice had any information about the involvement of certain people at the White House, certain people at the Committee for the Re-Election, and he said that I was to tell the Attorney General that the President wanted to hear direct from him and not through any staff people, if such information existed or came to the Attorney General’s hand. The Attorney General said he did not have any such information, that the evaluation of his office was that Mr. McCord’s letter to Judge Sirica was hearsay and not entitled to great weight, and that he was not possessed of any personal knowledge of any involvement of anyone in the White House or of Mr. Mitchell, who was one of those that I specifically asked about.

Senator TALMADGE. Were you informed on March 21 of this year as to the substance of the Dean-President Nixon conversation of that day?

Mr. EHRLICHMAN. No.

Senator TALMADGE. The White House memo on that meeting states, and I quote:

Later that afternoon it was tentatively decided that everyone would go to the grand jury. However, Dean wanted immunity, Haldeman suggested that they write the whole thing out, release it from the White House. Ehrlichman said there should be no executive privilege claim and that no one should ask for immunity. The President told them to discuss these matters with Mitchell.

Do you still say that the President had no knowledge on March 21?

Mr. EHRLICHMAN. I thought your question was whether I had knowledge of the content of the President’s meeting with John Dean which they held between themselves. I was not at their meeting.

Now, this is another meeting, sir, which was later in the day, as I understand it, at which the discussion was not as to who was involved.

Senator TALMADGE. Did you have knowledge?

Mr. EHRLICHMAN. Of the contents of the President’s meeting with John Dean?

Senator TALMADGE. Of your conversation with Dean and of the President’s knowledge.

Mr. EHRLICHMAN. Well, I had—I am sorry, Senator, I am not sure I understand your question.

Senator TALMADGE. Were you not in the meeting, the conversation that took place in this White House memo on the afternoon of the 21st day of March?

Mr. EHRLICHMAN. I was in a meeting with the President, and Mr. Haldeman and Mr. Dean late in the afternoon of the 21st. My understanding is that the President had had a private meeting with Mr. Dean that morning, which is the meeting that you previously referred to where Mr. Dean is supposed to have told him all these things.

Senator TALMADGE. Were you not in the meeting with Dean when he said that you were indictable?

Mr. EHRLICHMAN. No, sir.

Senator TALMADGE. You were not?

You still say that you had no knowledge or the President had no knowledge of what Dean was talking about?

Mr. EHRLICHMAN. Well, I do not know. Now, the President did not tell me what the contents of his meeting with Mr. Dean on the 21st was.

Senator TALMADGE. What I cannot understand is how you can contribute to the conversation of that date if you had no knowledge as to what had transpired prior thereto.

Mr. EHRLICHMAN. Well, the conversation that I engaged in late in the afternoon of that day, which included Mr. Dean and Mr. Haldeman and the President, related to the White House response to this committee's inquiry and to the grand jury inquiry, and the question of executive privilege, and whether it should be invoked and as to what subject, and the question of attorney-client privilege, and the question of immunity. Now, those were general subjects. They did not relate to the implication or the culpability of individuals.

Senator TALMADGE. In your 60-minute interview over television, as I recall, you stated that taped conversations or where you thought there would be information or facts that "I would have to impart accurately and faithfully to the President or someone else." Is that a correct statement?

Mr. EHRLICHMAN. That was my general purpose in turning on my dictating machine and recording telephone conversations.

Senator TALMADGE. Did you relate the facts of these taped conversations to the President?

Mr. EHRLICHMAN. Not in every case, no, Senator.

Senator TALMADGE. To anyone else?

Mr. EHRLICHMAN. No.

Senator TALMADGE. Mr. Ehrlichman, I have listened to you testify now for 2 days and I judge you to be a highly intelligent, extremely articulate, faithful servant of the President of the United States, and I do not believe all this could take place in the White House without you knowing about it. Why did you not report it to the President of the United States?

Mr. EHRLICHMAN. Well, now, you say all this, Senator. We had on the one hand a very full scale investigation. On four separate occasions I was present when the Attorney General of the United States said, either to me or to the President directly, that the fruits of that very, very vigorous investigation satisfied him; that the only people indictable were the seven individuals who had been indicted. On repeated occasions, and this telephone call which we have just read little bits of,

on March 28, 1973, was typical of the President's continual questing for additional information. Here he is on March 28 saying to the Attorney General, "Do you have anything more to give me over at the Department of Justice on this? What about this McCord letter? Do you have anything to tell me about John Mitchell? If you do, call me direct. Don't work through some staff person that is liable to keep it away from me."

Senator TALMADGE. Let me ask you this: Do you mean to tell me that you, as one of the highest officials in the land, sat there in the White House after authorizing the sum of \$350,000 to pay for lawyers' fees, bail bond, and everything else on this coverup, supremely ignorant that you were obstructing justice?

Mr. EHRLICHMAN. I had nothing whatever to do with the \$350,000. Senator. I did not know the \$350,000 existed.

Senator TALMADGE. I think the record authorizes you paid it, authorized the payment.

Mr. EHRLICHMAN. If the record says that the record is wrong because, Senator, it was not until well into the month of March of this year that I had even heard about the \$350,000 fund.

Senator TALMADGE. Thank you, Mr. Chairman. My time has expired.

Senator ERVIN. Go ahead and ask him.

Senator TALMADGE. You had heard about Mr. Kalmbach, hadn't you?

Mr. EHRLICHMAN. He had nothing to do with the \$350,000 funds I had heard of. I had heard Mr. Kalmbach raising some money for a defense fund back in June and July of the previous year but there is no connection between those two.

Senator TALMADGE. You knew nothing about it?

Mr. EHRLICHMAN. No, sir.

Senator TALMADGE. It's hard to believe that a man of your intelligence could have been involved in so much complicated complicity and knew nothing about it?

Mr. EHRLICHMAN. I beg to differ with you, Senator. This was not my beat. This was not my business. I was, as my log will demonstrate to you, plenty busy with other things. I had absolutely no occasion to worry about political polling or those kinds of things that that money was associated with, and I just never heard of it.

Senator TALMADGE. You didn't operate in a complete vacuum, did you?

Mr. EHRLICHMAN. I operated in a complete—[laughter]—I operated in a maelstrom of domestic issues. And my life was full of problems but it wasn't those kinds of problems. I was concerned with legislation, I was concerned with budget, I was concerned with getting messages up here in the Congress on domestic subjects. I was concerned about helping the congressional liaison people with congressional votes. I was concerned with briefing the press on domestic issues. My life was very full for 14, 15, 16 hours a day, Senator, but I certainly was not omniscient in the White House. I didn't keep track of Mr. Dean, I didn't keep track of Mr. Haldeman, I didn't see Mr. Strachan for months at a time down there.

Senator TALMADGE. I might draw a little parallel, Mr. Ehrlichman. Every public servant I know has a very busy life. A U.S. Senator, compared to the President of the United States, is a relatively minor

office, but our office also works 18 hours a day. I have got some very loyal, hard-working, dedicated people on my staff but they don't work in a vacuum. Every one of them knows what the other one is doing, and in our office we don't keep secrets from each other, and when something of importance arises that they think I, as a U.S. Senator from Georgia, ought to know, they don't conceal it. They bring it to me and inform me, and I can act on it intelligently and not in the dark.

Mr. Chairman, I yield the floor.

Senator ERVIN. Senator Gurney.

Senator GURNEY. Thank you, Mr. Chairman.

On June 19, Mr. Ehrlichman, you had a meeting, I believe, with Mr. Colson and Mr. Dean. And there has been testimony here that there was some discussion at that meeting about instructions to Mr. Hunt to leave the country. Can you shed some light on this?

Mr. EHRLICHMAN. I believe I can, Senator. There were two other people at that meeting also, Mr. Kehrli, the staff secretary, and Mr. Clawson. I think the first time I heard this story about getting Hunt out of the country, and I take it that is what you are referring to, was sometime this year, either late in March or early in April, when Mr. Dean in my office told me I had said that. He said very dramatically,

I went to that telephone over there to the corner of your office and I picked it up and called somebody and sent Hunt out of the country and you remember that just a half hour later we decided that we shouldn't do that and I went back and called it off.

Senator GURNEY. When did this meeting occur?

Mr. EHRLICHMAN. Dean is recounting this to me this year.

Senator GURNEY. Yes.

Mr. EHRLICHMAN. Sometime late March, early April, someplace in there. I said, "John, I don't think that ever happened. When is that supposed to have happened?"

He said, "That was at the meeting where we talked about Hunt and his plight and his safe and you remember that."

And I said, "No, sir, I sure don't."

Now, coming off of that encounter, I thought it was a dead issue until after the President had talked with Henry Petersen around April 15, someplace in there, and the President then said to me, "The prosecutor says you tried to get Hunt out of the country."

And I said, "No, sir."

Now, I called Mr. Kehrli and I called Mr. Clawson and I called Mr. Colson, and I said, "What do you remember about this meeting, this is supposed to have happened?"

Senator GURNEY. This is after you and Dean had your confrontation.

Mr. EHRLICHMAN. And after I had been informed that he had apparently given this story to the prosecutor. And each of them, Kehrli and Clawson said, no. Clawson said first, "What do you want me to remember" or something to that effect, and I said, "I want you to remember everything that happened four square because this is something I am drawing a plan on."

And he said, "It didn't happen as far as I can recall."

But anyway I got to Mr. Colson and he said, "That didn't happen in your office, that happened in my office." And he said, "I had a conversation with John Dean about that and I told John Dean, 'For good-

ness sakes, if you try to send Hunt out of the country turn it off. It is a dumb idea.' And he did."

Senator GURNEY. How did Colson know that Dean had tried to tell Hunt to get out of the country or told him to get out of the country?

Mr. EHRLICHMAN. Because Colson said, "He tried to peddle that story to me."

Senator GURNEY. When did he try to peddle that story?

Mr. EHRLICHMAN. He didn't tell me. But then in checking around a bit I discovered that in this time era, Mr. Dean was apparently salting the mine a little bit. He was getting around and suggesting events to different people. He did the same thing with Mr. Haldeman, I understand, and these—

Senator GURNEY. On the Hunt again?

Mr. EHRLICHMAN. No; this was on something else, and I can't remember what it was but I just remember Haldeman saying, "Well, that happened, you know he was in here peddling one of these stories to me."

Senator GURNEY. This is all during the period of March and April, somewhere in there.

Mr. EHRLICHMAN. This was after the Camp David attempt by Mr. Dean to collect his thoughts.

Senator GURNEY. I see.

Mr. EHRLICHMAN. And so, anyway, Colson told me this, and that concluded the matter as far as I was concerned in corroborating my absence of any recollection of such a thing having happened. But apparently there was a pattern through those weeks of Dean trying to assert these sort of antics to the landmark across the landscape.

Senator GURNEY. Did you go back to Dean after that and say, "I checked this story on you and it never happened. Why are you telling me this?"

Mr. EHRLICHMAN. No; by that time Mr. Dean and I were not communicating with one another.

Senator GURNEY. What other things did he try to peddle, to whom?

Mr. EHRLICHMAN. Other than this particular tale to Mr. Colson and me and the one about Mr. Haldeman which I am sorry to say I can't recall. The deep-six business of the disposal of the document was also given to the prosecutors and came back to me the same way. That he did not try to plant on me that I can recall.

Senator GURNEY. Why would he plant the Hunt story. I mean what purpose would that serve?

Mr. EHRLICHMAN. I confess, I don't know except—well, this is really remote, but I do understand that in fact Mr. Dean did make the call to have Hunt leave the country, and like some other episode that we discussed the other day he has tried apparently to tie events of that kind to someone else's authority.

Now, I don't know the date of the actual call but I have heard and, as I say this is really secondhand, that Hunt got such a call, either got it from Dean or on Dean's say-so and it's a little bit like the McCord-Caulfield situation, he is tying it back to me.

Senator GURNEY. As far as you are concerned you never gave him that instruction?

Mr. EHRLICHMAN. Correct.

Senator GURNEY. At this June 19 meeting or any other meeting?

Mr. EHRLICHMAN. That is correct.

Senator GURNEY. On the phone or any other way?

Mr. EHRLICHMAN. That is correct.

Senator GURNEY. There has been a controversy and certainly a question in my own mind about the so-called investigation that may have been done or might not have been done around June and July into the Watergate affair. Of course we first heard about it, I guess from the President's press statement in August.

Mr. EHRLICHMAN. Right.

Senator GURNEY. In which he said that the White House investigation has been conducted by John Dean and everybody is clean in the White House and the White House has had nothing to do with Watergate.

What do you know about that? Can you give the committee any information on that?

Mr. EHRLICHMAN. Well——

Senator GURNEY. Did Dean ever conduct an investigation?

Mr. EHRLICHMAN. I believe he did, Senator, and——

Senator GURNEY. By the way, who prepared that statement for the President, where did he get that information?

Mr. EHRLICHMAN. For the press conference?

Senator GURNEY. Yes.

Mr. EHRLICHMAN. He got it from me and he got it from Ron Ziegler but primarily from me.

Senator GURNEY. All right, go on.

Mr. EHRLICHMAN. During the months of June and July as I testified before, John Dean had really two basic responsibilities; one was to determine whether there was any White House involvement in this break-in, and the other one was to keep us informed of developments as they occurred.

Senator GURNEY. Well now, who gave him those instructions?

Mr. EHRLICHMAN. I am sure that I gave him the latter instructions the first day.

Senator GURNEY. To keep you advised?

Mr. EHRLICHMAN. To keep me advised because it was a breaking campaign issue and I felt that both Ron Ziegler and I needed to have that information. As far as the former is concerned, looking out for White House wrongdoing, that is the inherent and long-established duty of the counsel to the President, and he had been performing that function in other settings and contexts since the time he first came there, and as a matter of fact, it's interesting that in your exhibit that he wrote at Camp David he says, "When I first heard about this out in San Francisco as I was flying in I knew that I was going to have to get into this right away" and then he goes on in that exhibit to say, "I set about to contact everybody that I thought might have any knowledge about this thing and I had personal interviews with a number of people and here are my findings" and then he starts out and he lists what he finds from his interviews about different people in the White House that he thought might have some connection with this, me, and Colson, and a whole lot of people.

Senator GURNEY. Are you talking about his statement?

Mr. EHRLICHMAN. I am talking about his.

Senator GURNEY. He gave to us?

Mr. EHRLICHMAN. No, no; I am talking about the work product of his 6 days at Camp David which is, I believe, is exhibit No. 39, my numbering may be wrong.

Senator GURNEY. I see.

Mr. EHRLICHMAN. Is that correct, Mr. Dash?

Senator GURNEY. I understand.

Mr. EHRLICHMAN. I have an index of your—

Senator GURNEY. I thought you were talking about his statement that he read to the committee?

Mr. EHRLICHMAN. No, sir.

Mr. DASH. You are right, it is 39.

Mr. EHRLICHMAN. Yes, exhibit No. 39. I am talking about a document which the President asked him to prepare.

Senator GURNEY. I understand.

Mr. EHRLICHMAN. And this all comes, of course, from these conversations that we have been referring to over here on the 21st of March where he comes in and he says whatever he said to the President.

Senator GURNEY. Yes; but let's get back to this Dean investigation and report.

Mr. EHRLICHMAN. Right.

Senator GURNEY. During those months of June and July because that is pretty significant.

Mr. EHRLICHMAN. All right.

The key date in all of that, in my opinion, is—well there are two key dates. The first one is July 31 and that is the date of a meeting that I had with Attorney General Kleindienst and Mr. Dean. And at that time the report to me from both of them was that there was no White House involvement in the planning or the discussion of the break-in, which is really the question that we are talking about there.

Then the Department of Justice investigation is finished the second week in September, and the Attorney General makes report to the President and the Vice President and the Cabinet in which he reiterates this, and then into the—of course that—pardon me, that post-dates the President's statement of August 29, into the August 29 period. I am talking to Dean, Ron Ziegler is talking to Dean, and we are continually updating the things that Ron Ziegler is saying to the press about White House involvement.

Senator GURNEY. Now, this is almost on a daily basis that you are talking?

Mr. EHRLICHMAN. On almost a regular basis, one thing we were scrupulous about was never to have Ron Ziegler go out and say something that was erroneous. [Laughter.]

We had to rely on somebody for authentication, and the man we were relying on was the man who was in the cockpit of this thing from those two standpoints, both White House wrongdoing and information, and so we were checking independently and we were checking collectively on this right straight through, and I think Mr. Ziegler would tell you, as I must tell you, that we were getting nothing but reassurances all through this period of time from Mr. Dean corroborated by the very, I think, sincere and genuine opinions of the Attorney General with regard to that question, all the way through this period of time.

Senator GURNEY. Now, at the beginning of this investigation, back there, I suppose it must have started a few days after the break-in in June, did anybody get John Dean in and sit him down, the President of the United States and say, "John, I want you to conduct an investigation and find out if any White House people are involved," or did you get him in and do the same thing?

Mr. EHRLICHMAN. The first day, Monday, at noon, John Dean and I sat down and we talked about our need for information, and we talked about substantially in the terms that I have given you here, but I think you have to understand in our staff system that for me to say "Now, John, I want you to go and find out if anybody in the White House was involved in this," was really superfluous because he is the man, and he is a self-starter in that regard, and it is, just no question about it, having been in that job I was doing that kind of thing. As tips would come in during my tenure as counsel, I would follow them up, and find out if there was a conflict of interest, if somebody on the White House staff was potentially involved in a crime or a tax fraud or something of that kind, and try to root him out of there before we had a problem and we did that and we got him out. For me to have said, "Now, John, this is something new and I want you to find out if anybody in the White House is involved," would have been to insult his intelligence and to just simply restate what everybody assumed he was doing.

Senator GURNEY. Well, all right. We will assume that was being done and you knew about it and he knew what his job was. How about the President, did he know Dean was doing this, too?

Mr. EHRLICHMAN. Yes, sir.

Senator GURNEY. How did he know?

Mr. EHRLICHMAN. He knew because I was telling him and as Dean was feeding me information and progress reports on the case I was passing those along to the President and I am sure Bob Haldeman was, too.

Senator GURNEY. How did Dean make his progress reports to you?

Mr. EHRLICHMAN. Mostly on the telephone, but also in person.

Senator GURNEY. And almost daily, is that right?

Mr. EHRLICHMAN. Not necessarily, but as something would occur, and particularly where something was about to break, he had extraordinarily good sources of information, obviously, in the prosecutor's office or the U.S. Assistant Attorney General's office or somewhere, so that we had anywhere from 24 to 36, 48 hours lead on some of these things before they became newspaper stories.

Senator GURNEY. Some of this, as you know, particularly as it came out in the Gray confirmation hearings, and two of the committee members sat on those hearings, the chairman and myself, were very disturbed. I think every member of the committee was—Judiciary Committee I am talking about—when we found out that two whole logs of raw FBI 302's ended up in the White House, in John Dean's hands and then we also found out later that other people apparently looked at them, too. This is a highly unusual procedure. Did you know that was going on?

Mr. EHRLICHMAN. Senator, I am not aware that it is unusual, and for this reason. When I was counsel we had situations that came up where an individual was charged with wrongdoing or something of

that kind, and I had to try to make a recommendation to the President. I can recall vividly one case where an individual that he proposed to appoint had an ex-wife who really unloaded on the FBI what amounted to really sensational slander, and it took the FBI literally weeks to unweave this story and finally clear this man of these charges.

Now, during that time, rather than to rely on an FBI summary, I insisted on seeing the interview data because this was a serious matter for this man, his reputation and his relationship to the President.

To my knowledge, the counsel to the President has had access to these 302's, as they are called, and I think properly so, if they are properly used.

Now, I do not know about the circumstances of their being shown to anyone else. I do not think that that is necessary or indicated in the proper function of the counsel's office.

Senator GURNEY. Does counsel have access to them directly, through those who have custody or does he through the Attorney General?

Mr. EHRLICHMAN. Well, I am not familiar with how Mr. Dean got or used them. But in my experience when I was——

Senator GURNEY. Let me tell you, he bypassed the Attorney General as nearly as I can determine the testimony, and went directly to someone else in the Justice Department.

Mr. EHRLICHMAN. I do not think that would be unusual. I think that would be a matter of fairly common practice, at least it was when I was counsel. My contact on something of that kind—well, I cannot say. It would ordinarily have run through Bud Krogh, who was my assistant at that time to someone at the Justice Department but I rather doubt that it would be the Attorney General personally.

Senator GURNEY. Because these 302 forms involved people other than those in the White House, as I understand it, I guess they involved people in the Committee To Re-Elect the President, too.

Mr. EHRLICHMAN. Well, my—I cannot testify to what Mr. Dean got or what he used. My impression was that he was drawing on FBI reports as a part of his investigation process and more than that, he was sitting in on the interviews that the FBI agents were conducting with the White House people, and he did that with the knowledge and consent of all of us, with the expectation that he would be picking up impressions and information during that process that would enable him to carry out his function of determining whether there was any White House wrongdoing.

Senator GURNEY. Well now, he conducted this investigation through June and July, and was there a time when he came to you and said, "Now, I have finished this job and here are my results"?

Mr. EHRLICHMAN. Well, I considered that July 31 meeting a point of virtual finality with regard to that inquiry. I came out of that July 31 meeting feeling that I had the straight word on White House involvement, and——

Senator GURNEY. How many people did he interview in the White House in this investigation of his?

Mr. EHRLICHMAN. I haven't any idea but I would judge——

Senator GURNEY. He was reporting to you?

Mr. EHRLICHMAN. Well, I don't think he reported to me in numerical terms as to the number of people he interviewed or the number of

FBI reports that he saw. The field of inquiry was relatively narrow. It was obvious that the people in the mailroom, and the people in the congressional liaison section and so on were not the subject of his inquiry. He was looking primarily at a few political operators in the White House, plus a few other people around the periphery, and he satisfied himself, apparently, ostensibly of the noninvolvement of those people, and that was the essence of his report in specific terms as to specific people.

Senator GURNEY. Then did you go to the President somewhere around this time?

Mr. EHRLICHMAN. Yes, sir, I did.

Senator GURNEY. When was that?

Mr. EHRLICHMAN. Well, that would have been very shortly after July 31.

Senator GURNEY. What did you say?

Mr. EHRLICHMAN. I said that I had had this meeting and I gave the President the substance of the meeting.

Senator GURNEY. And that is based upon—that is when the President decided to issue his August 29 statement.

Mr. EHRLICHMAN. I don't believe so. I think that came considerably later and there is another not too long story of events that goes in between there that explains how that came about.

Senator GURNEY. What were those?

Mr. EHRLICHMAN. Well, that has to do with my strong feeling coming out of the July 31 meeting that the Watergate was a political liability that ought to be shed, that we ought to get rid of it as a political issue, and the only way to do that was to make a clean breast of it.

Now, we had a foundation, we had an anchor stone in the sense that nobody in the White House was involved so it didn't come directly to the candidate, to the President, and if, indeed, there were people in the Committee To Re-Elect who were involved then that was a manageable political liability, and this was at the time when the opposition had nominated their candidate, he didn't appear to be as formidable as he might have been. He was having his own vicissitudes at that time. We were going into our convention period very strong, and it looked to me like we could take the shock, if there was indeed a shock, from a disclosure of somebody at the Committee To Re-Elect being involved, and that that would be an acceptable, that would be an acceptable political minus, so to speak.

So I began to advance the thought that we might make a very comprehensive statement on this subject.

Senator GURNEY. When did you advance this thought?

Mr. EHRLICHMAN. Well, it would have been starting in the early July days, and up until the time I left to go to the convention about the middle of August.

Senator GURNEY. Let me ask just one other question here: Why did John Mitchell resign? Did you have any part in the negotiation that went on at that time?

Mr. EHRLICHMAN. No, sir. I can't honestly answer that question. I do not know. I believe what I heard about that and what I was told, which was that it was for family reasons.

Senator GURNEY. Well, here is a man who is going on full charge running a campaign and then this burglary takes place and a few days later resignation, didn't that arouse your curiosity?

Mr. EHRLICHMAN. Well, out of fairness to him there were other things going on at the same time. He was having a very tough family situation. I know at that time, and it was——

Senator GURNEY. I don't want to get into that.

Mr. EHRLICHMAN. No, it was tearing him up, and I know it so it was not a thing that really made me skeptical because I knew how it was eating him up, and so he is not an individual who shows it a great deal but you could tell. So, it did not surprise me and the reason that was stated was credible to me, knowing what I knew about that situation.

Senator GURNEY. Was there any skuttlebutt around the White House around about that time that the resignation was to get rid of a liability to the campaign?

Mr. EHRLICHMAN. No, at least none that I——

Senator GURNEY. Never discussed this with anybody?

Mr. EHRLICHMAN. None that I gave any credence to at the time.

Senator GURNEY. Well, what was there that you didn't give any credence to?

Mr. EHRLICHMAN. Well, I say, if there was any I gave it not credence at the time. I can't recall any frankly. I accepted as legitimate the statement that was made that he was resigning for family reasons.

Senator GURNEY. I see. I think my time has expired, Mr. Chairman, so I will yield.

Senator ERVIN. Senator Inouye.

Mr. EHRLICHMAN. Mr. Chairman, I am not quite finished with this effort to get the story out.

Senator GURNEY. That is right. We did leave that. May I indulge the committee just a few minutes more to finish that.

Senator ERVIN. Yes.

Mr. EHRLICHMAN. Because it does explain why the President made the statement on August 29 and I think we are sort of on one-leg and not the other.

At the time that I left to go to Florida for the platform committee deliberations a week or 10 days before the convention, I had laid out for my colleagues, who were those interested in the campaign, my proposal that on the day that the President was in Hawaii meeting with Prime Minister Tanaka would be an ideal day for Clark MacGregor to step out as the new campaign manager and lay this all out and say whatever it was that could be discovered.

By independent investigation, by a firm of outside attorneys or investigators, or however it had to be done, and then say, "This is the whole story," and match that with a White House statement based on what I had learned at the end of July, that there was no one in the White House involved, and then move on. The President being involved in a foreign policy negotiation, removed from the continental United States seemed to me just a natural match.

Senator GURNEY. And you proposed this to someone?

Mr. EHRLICHMAN. I did propose it. I discovered it was not accepted, it in fact was strongly objected to by others who were much more closely tied in to the campaign strategy on the grounds——

Senator GURNEY. Who did you propose it to?

Mr. EHRLICHMAN. Well, we had this Monday-Thursday group that met regularly that consisted of Mr. MacGregor, Mitchell, Harlow, and Colson and I breached it to that group because it included vir-

tually the management elements of the campaign and then, as I say, I left earlier than the others about a week or 10 days to go and look after the platform.

My belief, and I am only stating my belief, my assumption is that prior to the commencement of the convention that idea was set aside as a poor idea because the Watergate was not our issue. It was their issue, and one did not talk about their issue. One only talked about our issues, and that we would be prejudicing the rights of individuals who might be involved, and we could not do that, and there were other reasons of that kind that were apparently advanced in discussion, and it simply didn't ever get off the ground.

Well, I didn't forget the idea. After our convention, when the President went to California, it seemed to me still very legitimate for us to make very clear the fact that the White House was not involved, even if we could not take the other leg of the argument and say that the Committee To Re-Elect had had a similar investigation itself. So I discussed this with the President. He agreed that this would be a very good thing. He questioned me closely on how certain he could be of the soundness of that assertion and I told him what I knew dating from July 31 through any subsequent events, and I vouched to him that everything that had been reported to me corroborated that what he was about to say if he were asked at this press conference, and so on August 29 he went out and spoke as to the White House only with regard to this.

Now, by way of some corroboration, if it is needed on the matter of the Committee To Re-Elect side, Mr. Dean, in fact, wrote up a few pages of what Clark MacGregor might say if he did go out and have a press conference on this subject. Either on the date I suggested or some other date, and Mr. MacGregor, I think, does remember having received that memo, it was his opinion that it was very bland, innocuous, and did not make a case convincingly. Mr. MacGregor had conducted his own inquiry at the committee and had interviewed everybody in the hierarchy over there, and had more or less satisfied himself, but he did not feel he was in a position to personally vouch.

Senator GURNEY. Just one question there. At that time, of course, you knew that Mr. Dean and Mr. Kalmbach were engaged in raising money to pay these defendants, and we will use their version, for legal fees and family support. Now, there was certainly some White House involvement in this business whether it was legal or illegal, it was White House involvement. Did you ever tell the President about that?

Mr. EHRLICHMAN. I do not know that I ever did, Senator, and I think the inquiry here—and I do not think this is an artificial distinction—that the whole focus here at this time was on how this thing happened, and we were talking about this thing being the break-in. I do not think that there was anybody who really felt that there was, at least I did not feel that there was any kind of a coverup going on at that time. I did not—it just did not dawn on me and I considered what Mr. Kalmbach was doing perfectly proper. But the President spoke to the question, “How did this break-in occur?” And he said, “Nobody in the White House had anything to do with the planning or discussion of this break-in,” which was the subject that everybody was focusing on at that point in time and in which Mr. Dean's investigation went to.

Senator GURNEY. Well, thank you, Mr. Ehrlichman. That is all, Mr. Chairman.

Senator ERVIN. Senator Inouye.

Senator INOUE. Thank you very much, sir.

Mr. Ehrlichman, in a question propounded by Senator Talmadge you responded that during the early days of April of this year you began an inquiry to determine whether White House staff people were involved in the Watergate coverup. That is correct, is it not?

Mr. EHRLICHMAN. Well, I do not think the inquiry was quite that, Senator, but I did commence an inquiry, yes, sir.

Senator INOUE. Will you name those people?

Mr. EHRLICHMAN. Yes, sir. I talked with Mr. Paul O'Brien, who was an attorney for the Committee To Re-Elect. I talked with Mr. Kalmbach, I talked with Mr. Dean, I talked with Mr. Colson, I talked with Mr. Strachan, I talked with Mr. Mitchell. I talked with Mr. Magruder, I talked once again to Mr. Strachan on a second occasion, and these were interviews, personal interviews.

Senator INOUE. As a result of these meetings you concluded that Mr. Dean and others were involved. I believe this is what you said?

Mr. EHRLICHMAN. I hypothesized, Senator. I cannot dignify this by calling it an investigation in the real sense. I was told enough things by these people, some of it hearsay once and twice removed, but with a pattern to it that I was able to go to the President and say, "All right, here is a sketch, here is a hypothesis of what I think happened here and what has been going on."

Senator INOUE. What did Mr. O'Brien tell you, sir?

Mr. EHRLICHMAN. Senator, I wonder if I could refer to my notes of that conversation so that I—

Senator INOUE. Will you look up your notes because I would be interested in knowing what Mr. Strachan told you, Mr. Kalmbach, Mr. Mitchell, Mr. Dean.

Mr. EHRLICHMAN. All right, sir.

Senator ERVIN. Senator, I had not noticed it was almost 5 o'clock, and I do not imagine—

Senator INOUE. Mr. Chairman, it might be a good time to recess at this time to provide Mr. Ehrlichman time to look over his notes.

Mr. EHRLICHMAN. Senator, I might say your staff has had a copy of these notes for 2 or 3 months, and I will be referring to the same thing that I turned over to the committee.

Senator INOUE. I just wanted it for the record, sir.

Senator ERVIN. We have been here a very long day and it is almost 5 o'clock, and I am informed we will have a vote right at 5 and I believe it would be a good time, since Senator Inouye cannot finish this afternoon, we will take a recess.

The committee will stand in recess until 10 o'clock tomorrow.

[Whereupon, at 4:55 p.m., the hearing was recessed, to reconvene at 10 a.m., Friday, July 27, 1973.]

FRIDAY, JULY 27, 1973

U.S. SENATE,
SELECT COMMITTEE ON
PRESIDENTIAL CAMPAIGN ACTIVITIES,
Washington, D.C.

The Select Committee met, pursuant to recess, at 10:05 a.m., in room 318, Russell Senate Office Building, Senator Sam J. Ervin, Jr. (chairman), presiding.

Present: Senators Ervin, Talmadge, Inouye, Montoya, Baker, Gurney, and Weicker.

Also present: Samuel Dash, chief counsel and staff director; Fred D. Thompson, minority counsel; Rufus L. Edmisten, deputy chief counsel; Arthur S. Miller, chief consultant; Jed Johnson, consultant; David M. Dorsen, James Hamilton, and Terry F. Lenzner, assistant chief counsels; R. Phillip Haire, Marc Lackritz, William T. Mayton, Ronald D. Rotunda, and Barry Schochet, assistant majority counsels; Eugene Boyce, hearings record counsel; Donald G. Sanders, deputy minority counsel; Howard S. Liebengood, H. William Shure, and Robert Silverstein, assistant minority counsels; Pauline O. Dement, research assistant; Eiler Ravnholt, office of Senator Inouye; Robert Baca, office of Senator Montoya; Ron McMahan, assistant to Senator Baker; A. Searle Field, assistant to Senator Weicker; John Walz, publications clerk.

Senator ERVIN. Senator Inouye, will you resume your examination of the witness.

Senator INOUE. Thank you very much.

Mr. Ehrlichman, when we recessed yesterday we were discussing your interviews as part of the inquiry made in behalf of the President, and in response to one of my questions you indicated that you had discussed or talked with Mr. O'Brien, Mr. Kalmbach, Mr. Dean, Mr. Mitchell, and again with Mr. Strachan, and you have indicated that you had maintained interview notes.

TESTIMONY OF JOHN EHRLICHMAN—Resumed

Mr. EHRLICHMAN. Of some of those, Senator, and I neglected to say I also talked to Mr. Krogh because of something that came up in the course of these interviews that I wanted to inquire about, so he would be an additional individual that I talked to.

Senator INOUE. We have no notes on Mr. Kalmbach, Mr. Dean, Mr. Mitchell, and Mr. Strachan. Is there any reason for this?

Mr. EHRLICHMAN. You should have. There are notes for Strachan and Dean. There are no notes for my talk with either—for my talk with Mr. Kalmbach. We did turn over to the committee staff the transcript of my interview with Mr. Mitchell which is a very, very poor one. It is not very helpful. It is very sketchy.

Senator INOUE. Mr. Dash, do we have the copies of the Kalmbach, Dean, Mitchell, and Strachan—

Mr. EHRLICHMAN. There are no Kalmbach notes, Senator. There are Dean and Strachan notes. The notes that I have here are O'Brien, Dean, Colson, Magruder, and Strachan.

Mr. DASH. Senator Inouye, whatever you have, is what we received. In other words, that was intact, delivered to us in that form, and we have no other notes.

Senator ERVIN. Let the reporter assign it the appropriate exhibit number.

[The document referred to was marked exhibit No. 98.*]

Senator INOUE. Then we have here, Mr. Ehrlichman, one Strachan and you had two Strachan meetings.

Mr. EHRLICHMAN. There are only notes for one.

Senator INOUE. We have a Reisner meeting.

Mr. EHRLICHMAN. No. I think that is actually the—that is the Dean meeting, J. D. is up in the corner of it. That is the Dean meeting on April 13 at 3 p.m.

Senator INOUE. Then, we have an O'Brien meeting.

Mr. EHRLICHMAN. Yes.

Senator INOUE. And Colson and Shapiro.

Mr. EHRLICHMAN. Right.

Senator INOUE. And Magruder.

Mr. EHRLICHMAN. Correct. That is it.

Senator INOUE. We have no Mitchell.

Mr. EHRLICHMAN. No; you have the transcription of two tapes, Mitchell and Magruder, that are both very, very hard to read, hard to understand because the tapes are hard to understand. You also have the tapes themselves, and they are for whatever they are worth. I do not think you can make much from them.

Senator INOUE. I received these notes early this morning, Mr. Ehrlichman, and I must confess that I find it very difficult to understand your hieroglyphics here.

Mr. EHRLICHMAN. Sure, right.

Senator INOUE. So, if I may ask you, whenever the initial "H" appears, is that for Mr. Haldeman?

Mr. EHRLICHMAN. Not necessarily. You would have to take it in the context. Senator, that could also be Hunt in some cases here, although I used the double "H" for Hunt on occasion.

Senator INOUE. JNM is John Mitchell?

Mr. EHRLICHMAN. Yes, sir.

Senator INOUE. And JSM is Magruder?

Mr. EHRLICHMAN. Yes, sir.

Senator INOUE. L or LD or LID is Liddy?

Mr. EHRLICHMAN. Well. LID is certainly Liddy, and I do not recall—yes, I have used L also for Liddy in the Magruder notes.

Senator INOUE. And K or EK for Krogh?

Mr. EHRLICHMAN. I believe so, yes.

Senator INOUE. And CC for Colson?

Mr. EHRLICHMAN. Yes.

Senator INOUE. Now, there is a Greek symbol, the symbol pi, who is that?

*See p. 2915.

Mr. EHRLICHMAN. That is the President.

Senator INOUE. That is the President of the United States? [laughter.]

If we may, may we begin with your meeting with Mr. O'Brien?

Mr. EHRLICHMAN. Yes, sir.

Senator INOUE. At San Clemente.

Mr. EHRLICHMAN. Right.

Senator INOUE. Please tell us what transpired.

Mr. EHRLICHMAN. All right, sir. The circumstances of this meeting were that Mr. O'Brien indicated that he had some information that he felt the President should have. He called and asked for an appointment with Mr. Haldeman. In view of the fact that 4 or 5 days previously the President had asked me to get into this, he was referred to me. We met in my office at San Clemente, and he began to tell me about what he believed would be Mr. Magruder's testimony—oh, in the upper right corner you will see that he told me that the purpose of his being on the coast was to see Herb Kalmbach in connection with some of the civil litigation which Mr. O'Brien was handling for the Committee To Re-Elect.

Senator INOUE. And this happened on April 5?

Mr. EHRLICHMAN. April 5 at 10 in the morning; yes, sir.

He said that there had been four meetings which led up to the Watergate break-in, and you will see the meetings were referred to by numbers with circles around them. We start with No. 1, which is actually the fourth one that he described to me, which was a meeting between Liddy, Dean, and Mitchell in the Attorney General's office in November. He said that Mr. Mitchell—

Senator INOUE. November of what year, sir?

Mr. EHRLICHMAN. That would have been 1971. That was a meeting which Mr. Mitchell apparently did not recall, which was held for the purpose of Mr. Dean introducing Liddy to Mitchell.

The second meeting appears in the date notebooks of various parties, and that was a meeting between Dean, Liddy, and Magruder for the purpose of introducing Liddy to Magruder, and that was held on January 27, 1972.

There was a subsequent meeting on February 4 involving Dean, Liddy, Magruder, and Mitchell. He said that the third meeting was "canceled," that is to say, the parties agreed that it would be described as a meeting that had been canceled, and then he refers later on to the construction of that story or that version.

He said that John Dean, and bear this in mind now—is hearsay twice removed, this is Magruder telling O'Brien, telling me, he said that Magruder said that Dean kept Haldeman advised by memo of all of these meetings. Actually, there were four meetings, and then he starts through again. The first meeting in November which I have described, he said there was actually a third meeting which was not any of these that I have heretofore described, where a \$1 million budget was proposed by Liddy. Everyone at the meeting agreed that that budget would not be adopted.

Senator INOUE. Did he say for what reason?

Mr. EHRLICHMAN. I didn't ask him. I don't believe at that point.

Senator INOUE. Was it because of the price tag alone?

Mr. EHRLICHMAN. I don't know, Senator, from this conversation. He didn't say.

He said that between meetings No. 3 and No. 4. Mr. Colson phoned twice to Jeb Magruder.

Now, in parentheses I have only according to Jeb, which indicated what Mr. O'Brien told me that this was, the only person he had ever heard this from was Magruder urging that this program go forward. Now I have the notation "Not price," and I don't know what that refers to. That does not jog my recollection at all.

He said that Liddy had a commitment from Krogh, that Hunt had a commitment from Colson, and these commitments, I took it, related to Executive clemency. That was the context in which that comment was made.

Senator INOUE. Liddy had a commitment from Krogh?

Mr. EHRLICHMAN. Yes, sir.

Senator INOUE. That he could receive Executive clemency?

Mr. EHRLICHMAN. That was what Mr. O'Brien said that Mr. Magruder had told him.

Senator INOUE. And Mr. Hunt said that he had a commitment from Mr. Chuck Colson?

Mr. EHRLICHMAN. No; I am not saying that Hunt said that. Bear in mind this is Magruder speaking to O'Brien now. Because of this assertion, I did contact Krogh later on to determine when he had had contacts with Liddy and to try to either verify this or set it aside.

Parenthetically, circumstances indicated that he had had no contact either direct or indirect with Liddy and so the—it was not borne out by anything that I could find collaterally in the time in which I worked.

He said that. He said at the fourth meeting Dean arrived late, Magruder, Dean, Liddy, and Mitchell attended the meeting. There was an intelligence budget of \$200,000–\$250,000. Dean said to Liddy that he, Dean, would have nothing further to do with this. I asked him about charts and he said the charts did exist, and the reason I asked him, of course, is that there was something in the press at this time about the existence of a set of charts. He said that the code name "Gemstone" was used, that that term was not translated into what it really stood for at this meeting. The party, he said, apparently didn't know, or that is what Magruder told him. I said, "Was bugging involved?" and he said, "Yes, bugging was one of the methods involved." It also involved counteractivities at the convention.

Then—

Senator INOUE. Do you know what the \$1 million budget involved?

Mr. EHRLICHMAN. He didn't tell me. This characterization at the bottom of the first page referred, so far as I can recall, to the \$200,000–\$250,000 budget.

He told me that there was a second intelligence operation at the Committee To Re-Elect which was not involved in this series of four meetings. This involved a cab driver who volunteered at the Muskie headquarters. He had been recruited by a friend of Ken Rietz who was a former FBI man in Tennessee, and he went into the Muskie headquarters and volunteered and became Senator Muskie's chauffeur and a friend of the family, and went to Muskie's house for dinner, and soon began carrying all of the Senator's mail back and forth.

Senator INOUE. And he photographed all the mail?

Mr. EHRLICHMAN. Yes; he photographed all of the mail.

Senator INOUE. Who is this friend of Ken Rietz?

Mr. EHRLICHMAN. The FBI man? I don't know. I don't have his name but apparently your staff should because when the Senate staff was looking for someone for this committee staff, he was approached, and so it shouldn't be too hard to find out who that was. He declined the employment apparently. [Laughter.]

One of the pieces of mail apparently was printed in Evans and Novak and so everybody in the Muskie organization was questioned about it except the chauffeur, and the chauffeur was a volunteer, he was paid nothing. Eventually he was transferred from Rietz to Howard Hunt for purposes of management and reporting.

Then I have a notation that Rietz became worried at some point about cash funds, and I believe that refers back to this business of the transfer. In other words, Rietz didn't like what he saw about cash in the organization and he wanted out and at that point he discontinued any connection with this kind of activity and Howard Hunt took it over.

I have a note Magruder was pushing, and I think what that refers to is a statement that Magruder was pushing generally for intelligence information.

He told me that Magruder told him that there had been an entry into the Democratic headquarters in May and that a bug had been planted, that he was satisfied that neither Dean nor Mitchell had knowledge of either the May or June break-in but that Mr. Magruder did.

Then he mentioned that he had been caught—no, I think this is Mr. O'Brien speaking for himself. He was advising caution with regard to John Dean's objectivity, in the advice he might be giving the President in this matter.

Senator INOUE. Who is Hofgren?

Mr. EHRLICHMAN. Hofgren is Daniel Hofgren and that name relates to the note that I will come to farther down on the page.

Mr. O'Brien said that Magruder reaches Strachan, Haldeman, Colson, and the President in his story. I said, "How does Magruder reach the President?"

And he said in this circumstance, Magruder fired Gordon Liddy, he will say, Gordon Liddy went to Gordon Strachan and Gordon Strachan came to Magruder and said, "Move him back," that is, this is Strachan talking to Magruder saying, "Move Liddy back. The President wants this project to go on."

I said, "Is there any other way that this reaches the President?"

And he said, "Not that I know of."

Now, he said, "According to Mr. Hofgren, Mr. Magruder's wife was indicating to three friends apparently that there was a possibility that Mr. Magruder would be indicted and that he was planning to leave the Government."

And that is the reference to Hofgren at the top of the page.

Now, Mr. O'Brien said that neither Magruder nor Mitchell in his, O'Brien's opinion, were inevitably hung in this case by the evidence as he understood it at that point. He said, "Frankly, John Dean is the key problem."

Mr. O'Brien was concerned about the post-Watergate situation and about the handling of money and then he began telling me about this money situation which concerned him. He told me about Mr. Rivers, Mr. Kalmbach's man who delivered \$25,000 in cash to Attorney Bittman by leaving it in a phone booth, and I said, "What became of the money?"

And he said, "I believe it was deposited to their firm account." He said, "There has been obstruction of justice," in his opinion. I asked him to define what he meant by that. He said that a defendant in a criminal case is also a witness, and the purpose of giving money to such a defendant becomes very important. It is OK if one gives them attorneys fees and defense funds or possibly even subsistence but not consideration to not talk, in other words, the quid pro quo of silence.

Then he said, "Money flowed to Howard Hunt, in turn to Howard Hunt's wife, and then in turn, \$19,000 to Mr. McCord, which in turn went to McCord's attorney."

And this was an example that he was citing to me.

He said, Tuesday of this week, meaning the week of the 5th, that McCord was going to present a letter to the court which implicated Attorney Parkinson. He quoted McCord as saying this letter is a lie but I am going to get these bastards. He felt that having said that to the attorneys in the case that that comment was privileged but apparently McCord got cold feet. He stood up to deliver the letter against Parkinson in court but then he sat down without doing so.

Then he characterizes Mr. McCord, Mr. O'Brien does, in the adjectives that you see there in the exhibit.

He said later and I don't know what later—I know what later refers to. I was interrupted in this meeting, and went out, I believe, to take a phone call and came back. He said that Mrs. Hunt had written a memo which named Bittman and Parkinson as involved in the money business. That there is a memo from Parkinson to Dean to LaRue. The memo went to LaRue because LaRue was responsible for obtaining the funds for this purpose.

Just before Howard Hunt was sentenced, which would have been in March, as I recall, although it doesn't say so here, Bittman phoned O'Brien who, in turn passed a message to Dean, Mitchell, and LaRue that Hunt was making a demand for \$70,000.

Then he said in his opinion the attorney-client privilege will not cover meetings he was in or any conspiracy that he was in, and that refers to John Dean, and then he mentioned to me that Dean's attorney is Mr. Hogan. That Dean is represented and that he is actively counseling with an attorney.

He said that two blocks of money were delivered by Mr. Mitchell, I take it, not personally but by the campaign to Mr. Haldeman.

Senator INOUE. How many dollars?

Mr. EHRLICHMAN. I don't know and I don't think he knew. I believe I asked him.

Senator INOUE. Was this in cash?

Mr. EHRLICHMAN. I don't know that either. He just said that he—because I was pressing him for any White House involvement and all through these interviews, Senator, that was the key question all the way through.

He said the night of the Watergate break-in, Sloan and Stans took cash home amounting to about \$81,000 which they returned the next day. This was given to LaRue on advice of Mardian and this money was used for subsistence for the defendants. He said Mr. LaRue has \$100,000 now, \$81,000 of which he has held since that time, since, for the past 11 months.

Sloan said to O'Brien that \$1 million to \$2 million in cash had come in. Stans reported that it was about \$1,700,000, which included \$275,000 that had gone to Kalmbach and \$350,000 sum which had gone to the White House. He said, Mr. O'Brien said, that one sheet of paper exists with an accounting of this \$1,700,000 on it, and three people know where that accounting is.

Senator INOUE. Who are the three people?

Mr. EHRLICHMAN. I will come to that later on in the accounts. I think I had better take this seriatim, if you don't mind, to explain the hieroglyphics as we go along.

He said as far as his reputation was concerned that Mr. Stans was "done" but that he, O'Brien, did not foresee that Mr. Stans would be indicted. He is not guilty of any perjury, he had been very foxy in the statements which he had made, that if he could spend a week with Mr. Kalmbach and could get their accounts straightened out, he didn't foresee that there would be any liability in Mr. Stans.

Then we talked about the civil suits. There were two. The Democratic suit and the Common Cause suit. He felt if the Committee To Re-Elect would only file with the Congress an accounting of all contributions that the Common Cause lawsuit could be mooted. It would take somewhere between 2 weeks and 6 months to get those accounts in shape and he didn't know just how long it would take. He said that Mr. Stans was extremely opposed to doing this because this would break faith with the contributors who had contributed anonymously. He said if we didn't do this, he said, "I am satisfied we are going to lose the case."

In the Democratic National Committee suit, settlement negotiations were underway because Larry O'Brien was now on the payroll of Dwayne Andreas. Mr. Andreas held his future—Mr. O'Brien as long as the countersuits existed couldn't get credit, couldn't buy a house, Robert Strauss wants to settle the case, Mr. Mitchell met with Strauss the previous day. The number that was being kicked around was a \$500,000 settlement and he said there are \$5 million available in the Committee To Re-Elect treasury to make that settlement.

Howard Hunt was a prime—Howard Hunt was a prime contact for Segretti according to Mr. O'Brien and I don't know what his source for this information is. I think we have gone out of the Magruder part of the source business now. That Hunt supplied a Florida printer to three key Segretti men, one a man named Norton in Los Angeles and one from Tampa and another from Florida whose names he didn't know. These three men performed dirty tricks.

Senator INOUE. What were the dirty tricks?

Mr. EHRLICHMAN. Well, the only one I have a note of is generator of Canuck letter and presumably he meant by that that either Segretti or one of these three people were the generator of that letter. What his

source is for that I do not know. I asked him about Dwight Chapin's involvement in this. He said, "Well, Chapin will take a bath," by which he meant his reputation of his good repute will be affected. He said someone is working newsmen for more favorable stories, and his source of information on that was a reporter named Lasky who told him that this was going on.

He said that Chapin had had a lot of Segretti contact. He said Segretti had an immediate worry which was that he had received these payments of cash as you see here in the exhibit totaling \$40,000, by April 15 he was going to have to pay his income tax, he needed guidance from somebody as to how to show that money as income or not, and he lacked money to pay his taxes.

He said he has the problem of how one describes his business, and how to deduct a business expense under those circumstances.

He said that Mr. Segretti had kept a very complete diary in which he had cataloged all of his expenses.

He then told me about Mr. Fensterwald, who was an attorney representing McCord. He said that Mr. Alch wanted out as McCord's attorney. McCord had done some things which Alch did not approve of such as phoning the Embassies of Chile and Israel with the thought they were tapped so he could be dismissed from the Government's actions against him. McCord also had sent an unsigned letter to Jack Caulfield which Mr. O'Brien described as sick, which related to the CIA and Mr. Helms and so forth.

He said that Caulfield had taken the letter to Mr. Dean. Caulfield had seen McCord three times. I asked him whether Caulfield had made any offers to McCord. He said he didn't know. He thought perhaps he had offered clemency but he thought also this would be susceptible of proof because McCord very well may have tapped it.

Senator ERVIN. I hate to interrupt the proceedings but there is a vote on in the Senate and members of the committee have to go perform their senatorial duties.

[Recess.]

Senator BAKER [presiding]. The chairman has been temporarily detained and he asked me to recommence the hearings and to permit Senator Inouye to continue with his examination.

Senator INOUE. Mr. Chairman, I know my time has expired but I wanted the committee to know that my line of questioning was a very simple one. I just wanted the committee to be aware of the symbols in your notes and to better understand the interview notes.

Mr. EHRLICHMAN. Senator, on that, there is a kind of a personal shorthand that runs through there of a few Greek letters which I will be glad to give a Rosetta stone to the staff, if they need it.

Senator INOUE. Will you provide us with your transcript of the meeting with Mr. Mitchell also?

Mr. EHRLICHMAN. I have done so, I believe.

Mr. DASH. Again, what I have given to you, Senator Inouye, is everything that we have received, and we have no—

Mr. EHRLICHMAN. Did you give him the cassette and the transcript of the cassette, counsel?

Mr. DASH. We have the tape—that is right. We have the tape of the Mitchell meeting but I am talking about the notes.

Mr. EHRLICHMAN. The thing I referred to in answering the Senator's question was that tape and the transcript of the tape, which is all that I have of that meeting.

Mr. WILSON. I think, Mr. Vice Chairman, that Mr. Strickler and Mr. Hamilton had an exchange whereby the transcription that we had was sent up. Is that right, Mr. Hamilton?

Mr. HAMILTON. That is correct.

Senator INOUE. Mr. Chairman, now that I better understand the hieroglyphics and the notations and the symbols, I would like to yield the floor to permit me time to study these notes so that I can ask questions based upon these notes at a later time. So I thank you very much, Mr. Ehrlichman.

Senator BAKER. Thank you, Senator Inouye.

Senator Gurney, I understand, has a few additional questions, but since he has not returned to the hearing room yet, I wonder, Senator Weicker, if you are in a position to continue with your examination?

Mr. EHRLICHMAN. Mr. Vice Chairman, before the Senator begins, if I could just put a concluding note on Senator Inouye's examination of this item. More or less to drop the other shoe, these notes were not included in the President's papers, unlike my other notes, at the President's specific instance, in order that they could be available to the Attorney General and the prosecutors as source material and, of course, the committee. They were transmitted first by a phone call to the Attorney General and then by conference with the prosecuting attorney and then by an appearance at the grand jury during which these were all gone through in great detail.

Senator INOUE. Do you have a copy of the report which you presented to the President?

Mr. EHRLICHMAN. Sir, my report to him was oral.

Senator INOUE. Was it taped?

Mr. EHRLICHMAN. I have to assume so. It was given in the Executive Office Building office.

Senator INOUE. On what day, sir?

Mr. EHRLICHMAN. On April 14.

Senator INOUE. Thank you very much, sir.

Senator BAKER. I note that Senator Gurney has now returned to the committee table, and if it is agreeable then, we will proceed with interrogation by Senator Gurney instead of Senator Weicker, in the regular course.

Senator GURNEY. Thank you, Mr. Chairman.

Mr. Ehrlichman, we have touched base once or twice on the Kalmback transactions between him and you, and I would like to clean up one other point on that. That was the conversation you had with him on April 19—telephone conversation—and this was the one that was taped. We have a record of the tape here, of course. Do you have a copy of that? *

Mr. EHRLICHMAN. I believe I do.

Senator GURNEY. Let us turn to page 5. There was some conversation about his coming over and talking to you. Is this phone conversation, as I understand it, was just prior to the time he was going to appear before the grand jury?

*See exhibit No. 77, Book 5, p. 2215.

Mr. EHRLICHMAN. Yes.

Senator GURNEY. I think the day before, and he was here in Washington and talking to you and he said something about touching base with you before he went down to talk to the grand jury and you said to him, "Well, it is all right, but, of course, they will ask you about it," and indicated maybe you do not want that information to come out. So I will start there, if you want to, that is, if you want to come over and talk, they will ask you.

"KALMBACH. Will they?"

And you said "Yes."

Kalmbach said, "well, maybe I shouldn't," and you said they will ask you to whom you have spoken about your testimony and I would appreciate it if you would say you have talked to me in California, because at that time I was investigating this thing for the President.

KALMBACH. And not now.

EHRLICHMAN. Well, I would not ask you to lie.

KALMBACH. No, I know.

EHRLICHMAN. But the point is—

KALMBACH. But the testimony was in California.

Can you tell the committee what that would be all about? I mean, why would you want him to tell the grand jury that this phone conversation between you and him that day in Washington would better be reported to be in California?

Mr. EHRLICHMAN. Oh, no, no, no. I was referring to an interview that I had with Mr. Kalmbach in California in connection with this inquiry that I was doing for the President, and by that I simply did not want Mr. Kalmbach to omit, in his testimony, if they asked him what contacts he had had with me, be sure to tell them about that one in California because I was going to have to tell them about it and I did not want him to be caught unawares. That was a meeting which was not held in my office, it was held in his automobile and I was a little concerned frankly, that he might for some reason omit to testify to it. I was intending to testify to it also, obviously, I would have to say who I talked to in the course of this investigation.

Senator GURNEY. Were you concerned about his reporting this particular conversation that we are talking about now?

Mr. EHRLICHMAN. No, no; as a matter of fact, I turned over this transcript to the prosecutors and the grand jury.

Senator GURNEY. How often did you tape conversations on the recording device you had in the office on your telephone?

Mr. EHRLICHMAN. I did not hear the first part of your question, Senator.

Senator GURNEY. How often did you use the recording device that you had on your telephone to record conversations?

Mr. EHRLICHMAN. In routine business, very occasionally, not very often. As I got into this Watergate phase, after March 30, I began more and more to use it with people that I thought were somehow or another involved in the matter, and I used it in connection with the stories that came back to me about the charges that were being leveled against me by Mr. Dean in my calls to Colson, and Clawson, and Kehrli, and Clark MacGregor—people that I thought might provide me with some supporting evidence for my recollection as to what actually had happened.

Senator GURNEY. Well, that could be understandable. How about Kalmbach; Kalmbach was your very good friend, was he not?

Mr. EHRLICHMAN. Yes; but he was also very knowledgeable in this case and he had been one of the people that I had interviewed to try to get information for the President on the money end of this thing, and so I considered him to be a witness, if you please, in the inquiry.

Senator GURNEY. Of course, Kalmbach's reaction, as I am sure you know, was total shock at this recording.

Mr. EHRLICHMAN. I understand, and I regret very much but I had an assignment from the President that I felt I had to carry out. As a matter of fact, I did some checking on Mr. Haldeman, who is also my very good friend. I did that because I felt I had to bring to the President whatever information was available in the higher interest.

Senator GURNEY. Are you saying now this is during the period of time that the President had reassigned the business of Watergate to you and from Mr. Dean; is that correct?

Mr. EHRLICHMAN. Yes, sir.

Senator GURNEY. Going back to that, that assignment of investigation of the Watergate to Dean, and now I am not talking about June-July, I am talking about February of this year; as a matter of fact, I think Dean talked to the President on February 27.

Mr. EHRLICHMAN. That is right.

Senator GURNEY. And in that conversation with the President, the President assigned the investigation of Watergate, at least that current phase of it, to Dean. As I recall, he said that he wanted Dean to report directly to him. He also said that it was taking up too much of your time and also Haldeman's time. Was that ever discussed with you or with Haldeman, the President's decision to have Dean now become the chief investigator of Watergate, February 27?

Mr. EHRLICHMAN. Yes, Senator, except chief investigator, I think, is slightly off the track. The preoccupation at that time, as far as the President was concerned, was not in an investigation of the facts as nearly as it was to get some one person in the White House who was going to look after a number of existing problems with relation to this whole subject matter and they were primarily the problems of executive privilege and separation of powers as he saw it then, not a question of who done it.

So rather soon after this meeting we had at La Costa which was, incidentally, the meeting was the result of the President saying, "Who is in charge and what plans are being made and how is the work coming?"

Senator GURNEY. And this came at about the time this committee was created; is that right?

Mr. EHRLICHMAN. That is right; yes, sir.

Senator GURNEY. Concern about what to do about the investigation of the committee, how to respond to it?

Mr. EHRLICHMAN. Yes, sir; that was certainly part of it.

Senator GURNEY. Go on.

Mr. EHRLICHMAN. Coming out of that session, as a result of our report back to him that the work was largely undone, that a tremendous amount of work was left to be done in terms of developing the administration's position on executive privilege and attorney-client

privilege and marshaling all of the files that had to be marshaled and all the rest, that he said, "Well, I want Dean to take charge of this. I want you fellows to get out of it." He said to me, "I have got something else I want you to do and I want you to press on it," so I started off on an entirely different project that had to do with legislation, and from about the third week in February the understanding was that I was out of it. Bob Haldeman was basically out of it and Dean was the leadman in the White House on this whole subject of privilege, the committee, the grand jury, and all of the collateral questions that were associated with this.

Senator GURNEY. Did Dean make any reports to you after that or only to the President?

Mr. EHRLICHMAN. I saw very little of Mr. Dean in those months and quite a few weeks went by when I didn't see him at all, or for that matter really talk to him very much. Let's see, in the month of February, after the President made that assignment I didn't see him at all. The month of March I didn't see him at all for the first 20 days and then I saw him in connection with the Hunt blackmail twice on the 20th and on the 21st but that was the only subject that was discussed and then, of course, there was the meeting on the 22d with Mr. Dean and Mr. Mitchell, and then the President, and then from then on I had virtually no contact with Mr. Dean except one meeting with—in Mr. Haldeman's company the day we got back from San Clemente, of April 8, once on April 10, and then this meeting of April 13 for which the notes exist that are in Senator Inouye's hands.

Senator GURNEY. Just one further question on that. Was there ever any suspicion in your mind that the President appointed Dean to sort of be in charge of Watergate on February 27 because he might have had some suspicion that maybe you were involved or Haldeman was involved or somebody else in the White House was involved?

Mr. EHRLICHMAN. Well, what the President explained to me was that the central question here was one of executive privilege and the availability of Presidential assistance to testify before the Congress. You will recall this had come up in the setting of Peter Flanigan and coming before the, what the—

Senator GURNEY. Judiciary Committee.

Mr. EHRLICHMAN. Judiciary Committee.

Senator GURNEY. Kleindienst.

Mr. EHRLICHMAN. And through my notes of meetings with the President, there are three or four references to the President's strong concern that Haldeman and I were test cases, so to speak, of the availability of Presidential assistants to testify before the Congress, and I know there were some questions about his reference to us as principals. I think you have to take it in that setting. We were principals on the question of the availability of assistants to testify.

Now, the precedents that might be set by our testifying he was concerned, would in turn, open up Henry Kissinger's testifying and the whole panoply, so to speak, of Presidential assistants and very soon you would have a breakdown of the White House staff system because everybody would be up here testifying like Cabinet Secretaries do every day and couldn't get any work done.

So, basically, he thought that was where one drew the line, and he wanted Dean to focus very hard on that. I don't think, on the 27th, that the President was advised of any implication in this matter of either Mr. Haldeman or me, and in point of fact he continued to be confident through the 30th, I know, and as matter of fact, on through April 16, because he had a report from Mr. Petersen, the Assistant Attorney General, and the Attorney General to the effect that neither Mr. Haldeman nor I were criminally involved in this matter in any respect. So, and that was on the occasion of their meeting on that Sunday which would have been the 15th, wouldn't it?

So, I don't think, particularly February 27, but continuing down through the next 3 weeks, that he had any real concern about that.

Senator GURNEY. Well, you mentioned meetings with Dean so I guess it is a good time to go to those.

Let's go to this meeting between you and Mr. Haldeman and Mr. Dean following the March 21 meeting of Dean with the President. That is when the roof sort of started to cave in, and I am curious to know what transpired in that meeting between the three of you after the meeting between Dean and the President, when presumably according to Dean's testimony, substantiated by Moore in what Dean told Moore, Dean told the President everything he knew about Watergate. Then there was a meeting, as I understand it, between the three of you.

Mr. EHRLICHMAN. There was a meeting at 3:45 p.m. on the 21st.

Senator GURNEY. Yes.

Mr. EHRLICHMAN. And then that meeting moved to the President's office after about an hour.

Senator GURNEY. Now, could you describe to us what happened in your office—it was in your office, wasn't it, the first meeting?

Mr. EHRLICHMAN. I am not sure. I don't recall offhand.

Senator GURNEY. I have in the log here 3:45 to 6 p.m., Dean, Haldeman, that is the only thing it says. It doesn't say where, although there is another note that day of a meeting. It says Haldeman's office, so I would assume perhaps this 3:45 p.m. meeting was in your office.

Mr. EHRLICHMAN. I don't know. My notes don't show.

Senator GURNEY. It is a minor point.

Mr. EHRLICHMAN. In any event it was either in Mr. Haldeman's office or mine. I am sure.

The conversation——

Senator GURNEY. Who called the meeting? Do you remember?

Mr. EHRLICHMAN. No, sir, I do not. I do not. The conversation, as I recall it, largely involved the question of testimonial availability of White House staff people. It was this continuing question that was ongoing. Mr. Dean did not report in my hearing what he had told the President that day.

Senator GURNEY. He never mentioned anything about his meeting with the President?

Mr. EHRLICHMAN. No, sir, not that I can recall at all. We were largely, at both that meeting and continuing in the meeting which took place in the President's office afterward, we were taken up with the question of how to get the story out, No. 1, how to get White House people to testify fully, under what circumstances, whether they should

be made fully available to this committee, waiving all privilege or whether they should be made available fully to the grand jury and not to this committee at all, whether the attorney-client privilege still existed as to Dean, and he talked to us quite a bit about the law of attorney-client privilege as I recall on that occasion, and so it was that setting.

Now, Mr. Dean and I got into a difference of opinion at that time about the question of immunity, and how that should be handled. As I recall, right around this time, I think——

Senator GURNEY. Now what do you mean about immunity?

Mr. EHRLICHMAN. Well, his theory was that the President should negotiate blanket immunity for the White House staff with the Attorney General so that the entire White House staff, lock, stock, and barrel, could testify freely before the grand jury as to any and all facts and clear the air and everybody would be immune from prosecution. That just didn't make any sense to me from either a practical standpoint or a public appearance standpoint, and we got into a difference of opinion on that. That was again—pardon me, Senator.

Senator GURNEY. Well now, why did he say that?

Mr. EHRLICHMAN. Well, he was looking for formula, he had come up with a concept that there ought to be some kind of a commission, an independent commission that would be set up.

Senator GURNEY. But when somebody talks about immunity, obviously they are afraid of ending up in the pokey. Did he say, "Now we are all going to jail so he had better get some immunity here."

Mr. EHRLICHMAN. No, he said he was concerned that people would not talk freely. Now, Mr. Dean is an immunity expert. Mr. Dean told us early in the game that he was the author of the statute which the Congress eventually adopted granting immunity to people in certain criminal situations so that they would testify against higher-ups or coconspirators or whatnot, and so he gave us quite an accounting of the difference between use immunity and transactional immunity and the various technicalities of this and he explained that immunity was sort of the lubricant that was needed in this thing to get people to come forward and to fully tell their stories.

Senator GURNEY. If everybody is innocent of everything and stop with Liddy, why would people worry about immunity?

Mr. EHRLICHMAN. Well, I don't think at that stage that there was any necessary assumption on our part that everybody was innocent of everything. I think this was implicit in the conversation that there were liabilities. We were thinking in terms of Mr. Magruder, we were thinking in terms of people at the committee, but Mr. Dean was also implying to us that people in the White House would not come forward and testify freely without immunity.

This was a line that picked up, I guess, about this time and then was replayed over and over in his conversations with Mr. Haldeman.

Senator GURNEY. Did he mention to you in this discussion who would need immunity in the White House?

Mr. EHRLICHMAN. No; he did not.

Senator GURNEY. No names were mentioned at all?

Mr. EHRLICHMAN. No, sir; not that I can recall.

Senator GURNEY. Who did you think might, because you had some discussion on this?

Mr. EHRLICHMAN. I don't think that I thought who might at that point. Bear in mind I had been totally out of touch with this situation for some period of time. My reaction to his proposal was to simply say to him that that was out of the question, that we simply could not expect anybody to grant immunity either on a blanket basis or on an individual basis to anybody in the White House. I said that rather early in the conversation and that may have inhibited any specifics that Mr. Dean otherwise might have been willing to come forward with.

Senator GURNEY. What was Mr. Haldeman's reaction?

Mr. EHRLICHMAN. He didn't express a reaction that I can recall to that. He was concerned, as I recall, with the general subject of executive privilege because he had been hearing from Mr. Mitchell strongly about executive privilege and he conveyed to us Mr. Mitchell's strong feeling that the executive privilege position that the administration was taking was untenable.

Senator GURNEY. And he didn't say anything about this conversation he had had, this long conversation earlier in the day with the President of the United States?

Mr. EHRLICHMAN. No, sir; he did not.

Senator GURNEY. Did you know at that time about who may have been knowledgeable about the break-in. You know at some point in time he told you that some people knew about it?

Mr. EHRLICHMAN. Oh, no.

Senator GURNEY. This was later?

Mr. EHRLICHMAN. That developed as a result of phone calls that Bob Haldeman was getting while we were in San Clemente following—we left, I left—

Senator GURNEY. I don't want to get bogged down on that.

Mr. EHRLICHMAN. Yes, I left about 5 or 6 days later for California. While we were out there, we began realizing there was a strong conflict between Dean and Mitchell on this whole question of people going to the grand jury or the committee and so on, and could not get a feel of it because I didn't know what was behind it and I began trying to find out what was behind it, and then I talked to Mr. O'Brien and that is the first that I knew about these four meetings back in November and December, January, and February where these plans were laid. Then I began inquiring through Mr. Moore and others as to what Mr. Mitchell might have testified to that was worrying him, and why he didn't think Dean ought to go near the U.S. attorney or the grand jury and what his concerns were.

Senator GURNEY. Is it fair to say that up to this March 21 date you had no knowledge of what Dean's activities were in connection with Watergate, and now I am talking about possible illegal activities, other than the Kalmbach business, and this talk you had on Executive clemency? Is that a fair thing to say?

Mr. EHRLICHMAN. I did not know what he had to do with the Kalmbach business except in the recruiting of Mr. Kalmbach.

Senator GURNEY. Well, I am only talking about what has transpired here this week.

Mr. EHRLICHMAN. Right. I do not know about what lay behind that in terms of these meetings in Dean's office with LaRue and Kalmbach and all the others.

Senator GURNEY. But you knew nothing about his activities other than these little bits and pieces that we mentioned?

Mr. EHRLICHMAN. Well, in retrospect, I evidently knew about bits and pieces but I never had enough to alert me to put it together. I just—

Senator GURNEY. Well, all right. Is there anything else that occurred in that 1 hour that we should know back to the March 21 meeting in your office or Haldeman's?

Mr. EHRLICHMAN. You will get better information on that meeting, I think, from Mr. Haldeman, since he took notes during the meeting, I did not.

Senator GURNEY. What transpired in the President's office when you moved the meeting over there?

Mr. EHRLICHMAN. There was virtually a replay of this difference of opinion between Dean and me on the question of immunity for the White House staff. The President was advancing a premise at that meeting everybody goes to the grand jury, nobody goes to the Senate committee, and we go to the grand jury right away, and the White House staff marches down there in platoons, if necessary, and we get it all cleaned up, and if there is any problem, why, the problems are smoked out.

Senator GURNEY. Was that the decision when the meeting ended?

Mr. EHRLICHMAN. No, no; as I say, it was advanced as sort of a premise for argument and Mr. Dean said, "Well, that is what I have been saying, we ought to do that. We ought to do it under a blanket immunity and in that way all the truth will come out," and I was saying, I think that is just, I just think that is wrong, No. 1, I do not think anybody in the White House is entitled to immunity if they have done something wrong, and then they ought to take the penalty. More than that, I think it would be just terribly misunderstood by the American people.

Mr. EHRLICHMAN. Again, you will find that throughout these kind of things Mr. Haldeman seldom, if ever, takes an advisory position.

Senator GURNEY. He just listens, was that it?

Mr. EHRLICHMAN. He listens, he takes notes. He undoubtedly gives his opinion but he does not usually give it in an open meeting.

Senator GURNEY. Of course, he must have realized that he was involved in some way here and I should think he would have some opinion upon his future at a very important meeting like this.

Mr. EHRLICHMAN. I am not sure that either he or I had any real appreciation at that point in time that we were, in fact, involved in this, as you put it.

Senator GURNEY. Well, but we do have the evidence that he instructed Strachan to shred some papers that might have some weight on this.

Mr. EHRLICHMAN. Senator, I must say that story has arisen in the last 6 weeks, as far as I know.

Senator GURNEY. I am not saying you knew anything about that, I am simply saying I am surprised.

Mr. EHRLICHMAN. I do not think he knew about it either. I interviewed Strachan at great length and my notes are here and I asked him, because I was trying to find out about Mr. Haldeman, frankly. I said, "Tell me everything you know about how Haldeman might be tied into this thing," and he gave me four or five instances of some contact that Mr. Haldeman might have had with the Watergate business. There was not a scintilla of a mention of shredding documents anywhere in that.

Senator GURNEY. What you are saying is we may get different testimony from the next witness.

Mr. EHRLICHMAN. Well, and I am saying, too, that as we sat in this March 21 meeting, I do not think Mr. Haldeman or I had any contemplation that there was going to be a suggestion of our implication.

Senator GURNEY. Well, now, what did the President say to this difference of opinion between you and Dean on immunity?

Mr. EHRLICHMAN. He said that he would like to have us have a meeting with John Mitchell, and sit down and talk with him not only about that, about the basic question of whether staff should appear here or at the grand jury or both, but also recasting the administration's approach to the question of executive privilege because he knew Mr. Mitchell had very strong views on that.

Senator GURNEY. Did the meeting end on that note?

Mr. EHRLICHMAN. Yes, sir.

Senator GURNEY. All right. The next day you did have such a meeting, did you not?

Mr. EHRLICHMAN. Yes, we did.

Senator GURNEY. With the three of you and Mr. Mitchell?

Mr. EHRLICHMAN. Right, and then that meeting likewise went over to the President's office in the afternoon.

Senator GURNEY. Will you describe those two meetings?

Mr. EHRLICHMAN. I was only in a part of the first meeting held in Mr. Haldeman's office, that was the day Secretary Shultz came back from the monetary conferences and we were in the midst of a reexamination of phase III, the economic program, and I was sent to the airport to meet Secretary Shultz, ride back with him in a helicopter and bring him up to date on what the President wanted to meet with him about, and arrange for a time that afternoon when the Secretary could come over and we could have a further meeting and get into the work that had been in progress during his absence.

The Under Secretary—I guess it is called Deputy Secretary—of the Treasury, Mr. Simon, likewise rode back and we had that session.

So I joined, I rejoined, excuse me, the Dean-Mitchell-Haldeman meeting, not too long before it went over to the President's office.

Senator GURNEY. What transpired while you were there?

Mr. EHRLICHMAN. Sir?

Senator GURNEY. What transpired while you were there?

Mr. EHRLICHMAN. While I was there there was largely a discussion of executive privilege, and Mr. Mitchell's views that the Kleindienst testimony or—I do not remember whether he testified, but anyway, the administration position had been too restrictive, and that it was untenable both, he thought, from a legal standpoint and also from a political standpoint.

Senator GURNEY. Now, again, in this meeting in the President's office, there was no discussion of gory details of Watergate?

Mr. EHRLICHMAN. There was none, there was none.

Senator GURNEY. Just the technicalities of perhaps how to bring out the whole story?

Mr. EHRLICHMAN. Well, when the four of us went to the President's office again, it was largely how to get the whole story out, the question again of the grand jury, of immunity, in John Mitchell's presence with the President trying these various things out on John Mitchell and it finally ended up with the President assigning to Mr. Dean that he wanted Mr. Dean to sit down and write out a statement as completely as possible of the facts of this whole subject matter.

Senator GURNEY. This is why he went to Camp David some time later, a few days later?

Mr. EHRLICHMAN. Apparently. That is what I was told, that he found it impossible to do this job with the Gray hearings going on, and the distractions, and Mr. Gray making accusations against him, and so on.

Senator GURNEY. Now, this really puzzled me. Here on March 21, and that is the day before we are talking about now, supposedly from the testimony we have from Mr. Dean, and the testimony we have from Mr. Moore that Dean told Moore, Dean told him all about Watergate, that is, all Dean knew about Watergate, and then there is a meeting in the President's office between the President and Dean and you and Haldeman, and then there is another meeting between the three of you and Mitchell, and then you join the President, which, of course, is the next day. Did not the President say at any of these meetings, "Now, listen fellows, here I have heard all about this from John Dean, what gives here, what are we going to do now, what plans do you have, who is going to get this out? We have got to do it." No discussion of that?

Mr. EHRLICHMAN. Senator, I have great difficulty in believing that the President was told what Mr. Dean says he was told because of the President's approach to this, which I saw in these two meetings.

Now, I do not know what Mr. Dean told him. I guess Mr. Haldeman was in one of those meetings or part of it and maybe he is in a position to tell you.

Senator GURNEY. He never told you anything about what transpired in the meeting between the President, Haldeman, and Dean?

Mr. EHRLICHMAN. Well, he told me what Mr. Dean has testified to is not true. I am forced to the assumption by the President's conduct afterward that one of two things was taking place. Either he still confidently believed that the White House was without blame, and that Mr. Mitchell was without blame and was acting accordingly, or he was involved in setting a few snares on the trail and was playing it cool, because he did not get into any of the January, February, March planning meeting business or the involvement of January of John Mitchell or any of those kinds of subjects which presumably Mr. Dean had laid all out for him, if you are to believe Mr. Dean.

Senator GURNEY. You mean, to put it another way, he was in the process of getting the information out from everybody. Is that right?

Mr. EHRLICHMAN. It would be one of the two, and the assignment to Mr. Dean to go and write all this down would fit that hypothesis. In

other words, he was not going to move against anybody until he had this down and could see what this fellow really had and then would go forward.

Senator GURNEY. Well now, around about this time or somewhat later, and there are so many meetings here that I have really forgotten which occurred when, so perhaps I am going to have to rely on you for that, but did the President lift the phone up at any time and say, "John I want you to come over to the office here and talk about Watergate, what you know about it."

Mr. EHRLICHMAN. No, sir, not until way late in the game. He lifted up the phone one day and called me down and said, "I am satisfied that John Dean is in this so deeply that he simply cannot any longer have anything to do with it."

Senator GURNEY. That is when he transferred the assignment to you?

Mr. EHRLICHMAN. Yes, sir.

Senator GURNEY. What date was that?

Mr. EHRLICHMAN. March 30.

Senator GURNEY. And tell us again precisely what transpired in that phone conversation beyond what you have already.

Mr. EHRLICHMAN. Well, that was a meeting in the President's office on March 30, and it was, as I recall, quite brief. We had had, we were getting ready to leave that same day, as a matter of fact, for California, and he called me down, I am looking for the time to help me, to recall the time of departure here. Yes, we leave at 3 o'clock in the afternoon, we had had a long meeting that morning with Secretary Shultz and Mr. Sonnenfeld about the economy, and that ran from 9 a.m. to about, I don't know, what, 10 a.m. or 11 a.m., something of that kind, a long session, as I recall. He called me down for just about 10 minutes at noontime, and said what I have just told you, and I said, "Well, what is it you expect me to do basically" and he said, "I want you to step into what Dean has been doing here. I need to know about executive privilege, I need to know about attorney-client privilege, I need to have somebody set this strategy with regard to testifying at the committee and the grand jury and these other places and I need to know where the truth lies in this thing." And the only tipoff that I had had to that was a request from him on the 27th, I believe it was, yes, on the 27th.

Senator GURNEY. Is that the meeting between 11 a.m. and 1 p.m. with the President?

Mr. EHRLICHMAN. I believe—yes, yes indeed. That was for the purpose of dictating to me a list of questions that he wanted put to the Attorney General, and I believe that telephone call to the Attorney General which actually was not completed until the next day because he was traveling, is in your file, phone call with Kleindienst on the 28th, and I then went down a handwritten list of questions that the President had put to me about the progress of the case, about the involvement of John Mitchell, possible, any possible evidence that Kleindienst might have, any possible evidence of anybody else being involved at the Committee To Re-Elect, any evidence of any White House staff being involved and the President told me to tell the Attorney General that if he had any such evidence or if he developed any

such evidence, that he was then to transmit it directly to the President, not through me, not through anybody else at the White House but direct to the President, and in that message I did, as you see in the transcript, that I did transmit to the Attorney General.

Senator GURNEY. Do we have those questions that he——

Mr. EHRLICHMAN. No, sir, you do not. They are a part of my notes of the meeting of the 27th which are in the President's file.

Senator GURNEY. How many questions were there?

Mr. EHRLICHMAN. Well, there are about 10 or 12 topics, I think, written out on a piece of paper.

Senator GURNEY. Would you give us to the best of your recollection what the topics were and what the questions were?

Mr. EHRLICHMAN. I think I can do that best, Senator, by looking at that telephone conversation and—because I think that that transcript is quite faithful to the list. I just went down the list in talking with the Attorney General. I don't seem to have that in my——

Senator GURNEY. The telephone.

Mr. EHRLICHMAN. The telephone call with Mr. Kleindienst on the 28th.

Senator GURNEY. I wonder if the committee would hand this to the witness, Mr. Ehrlichman. That apparently is it. If we have another copy I wish I could have it, too, but I think it is better you have it at the moment.

Mr. EHRLICHMAN. We have a copy here; I may have stuck it back in the file.

Thank you very much.

Senator GURNEY. I have a copy here now.

Senator ERVIN. Let the reporter assign that the appropriate exhibit number.

[The document referred to was marked exhibit No. 99.*]

Mr. EHRLICHMAN. Actually the first sentence, as I recall, is only partly on this transcript and it said, "There are a number of things the President wanted me to cover with you," and only the latter half of that sentence is in the transcript.

Senator GURNEY. If we could, Mr. Ehrlichman, this is very important, but if you could summarize these as briefly as you can it will help out the committee because I think my own time is running out here.

Mr. EHRLICHMAN. You will see in the fourth paragraph I said, "No. 1, he wanted me to ask you these two things that I did yesterday about the grand jury and about Baker," meaning Senator Baker, and then we go into an inquiry about some statements that Senator Weicker had made to the press which the President had asked Pat Gray to check into. Then, and the President wanted a report on whether Senator Weicker had any evidence or not to support these assertions.

Senator GURNEY. I think perhaps you had better explain a little more about Senator Baker who is not here so we can know that there is no——

Mr. EHRLICHMAN. Well, the President had designated John Dean as the White House contact on Watergate, or the White House leadman on Watergate, as I say in February. He had also designated the Attorney General as the administration contact to the committee, and had

*See p. 2944.

asked the Attorney General to be in touch with Senator Baker with regard to committee rules and technical matters of that kind.

Senator GURNEY. This was just a liaison matter?

Mr. EHRLICHMAN. Yes, sir.

Senator GURNEY. So he can find out what was going on, what the committee planned to do, that sort of thing?

Mr. EHRLICHMAN. That is correct. So he was asking for a report from the Attorney General on that.

By the way, it comes back to me that in the meeting that Dean and Mitchell and Haldeman and I had in the President's office on the 22d that the President had picked up the phone and called the Attorney General and had given him some questions to ask Senator Baker about committee timing and that kind of thing so that he would be advised of the facts, and he had not yet had the report back from the Attorney General on that.

Then this first page is about Senator Weicker's statements, which was one of the items on the list.

Then at the bottom of page 2 I said, "The President said for me to say this to you that the best information he has had and has, is that neither Dean nor Haldeman nor Colson nor I nor anybody in the committee has had any prior knowledge of this burglary. He said that he is counting on you to provide him with any information to the contrary if it ever turns up. And you just contact him direct. Now as far as the Committee To Re-Elect is concerned he said that serious questions somebody raised with regard to Mitchell and he would likewise want you to communicate with him any evidence or inferences from evidence on that subject."

Senator GURNEY. I think we had better stop there.

The chairman points out to me that we have a vote on the Senate floor.

Senator ERVIN. We will stand in recess.

[Recess.]

Senator ERVIN. Senator Gurney will resume the questioning of the witness.

Senator GURNEY. I think we were there at the bottom of page 2, Mr. Ehrlichman.

Mr. EHRLICHMAN. Yes, sir; I saw during recess that I had skipped over the Attorney General's remarks in the middle of page 2 where in response to my general inquiry, a previous inquiry also, he said he has been emphasizing publicly that "The President wanted the matter investigated, to let the chips fall where they may, but second, if anybody has any information we not only want it, we expect to get it, so we can investigate it and if these indict other people and that anybody who withheld information would be obstructing justice." The Attorney General was saying this to the press and he was getting this out in every way that he knew how.

Now, then at the top of page 3 the significance of the McCord letter which was drafted by Mr. McCord and handed to Judge Sirica and which Judge Sirica read publicly was discussed and evaluated by the Attorney General.

Then, we return to the question about whether or not Mr. Mitchell was involved, and that led to a statement by the Attorney General that

if Mr. Mitchell were to be involved, and he says here that he has no evidence at this time that he is, but if he were, that we should give some thought in such an event to having a special prosecutor, the Attorney General would feel he would have to recuse himself. Then I asked him what the President's position would be in the event of such a thing and at the bottom of page 3 and middle of page 4 he advises such a procedure. Then we discussed, and again this is an item on my list, the matter of immunity: who determines whether immunity will be granted mechanically, and he said the Department of Justice determined that insofar as the grand jury was concerned but so far as the Senate committee is concerned that it made that determination in conjunction, I don't think he said in conjunction with the court, but that these were two separate procedures.

Then another item on my list was the status of the court action which I have referred to previously in testimony here, in answer to a question by Senator Weicker, and then finally I was asked to tell him that there was a possibility that the President wanted to see him in San Clemente the following Saturday. The Attorney General at that time was in Arizona, was planning to be in Los Angeles, and in point of fact that meeting did take place in San Clemente subsequent to this phone call.

Senator GURNEY. Did the President tell you at the time he gave these questions to you why he was asking you to inquire of the Attorney General rather than Mr. Dean, did that come up?

Mr. EHRLICHMAN. No, sir, it did not come up and I did not ask.

Senator GURNEY. But in retrospect you think he was perhaps having doubts whether he was getting a full story or not?

Mr. EHRLICHMAN. Yes, up until then Mr. Dean had been the contact with the Attorney General in matters of this kind.

Senator GURNEY. Then on what date did the President give this full assignment to you to run Watergate down for him?

Mr. EHRLICHMAN. Two days later.

Senator GURNEY. I think I had better stop there, Mr. Chairman, because I have taken enough time.

Senator ERVIN. Well, Senator, I would not want to cut you off. This is a very serious investigation we are making and you could proceed until noon if you have further questions and then we can recess for the lunch hour.

Senator GURNEY. Thank you, Mr. Chairman.

Let me then complete, if we can, the assignment you had from the President to now, be the sort of chief Watergate investigator in the White House.

Would you tell the committee about that, what you found and what you reported to the President?

Mr. EHRLICHMAN. I have tried to disclaim the designation "investigator," Senator, because I don't consider what I did to be an investigation, to a conclusive result.

Senator GURNEY. You certainly can define your role. I didn't mean to imply something you were not doing.

Mr. EHRLICHMAN. I had to get up to speed on this. I was not following the law on the matter and so the first thing that I did in another conversation with the Attorney General was to arrange to have someone in the Department of Justice prepare for me a thorough brief of

the laws of attorney-client privilege, executive privilege, obstruction of justice and all of these subject that we seemed to be encountering in this.

Senator GURNEY. Who was that?

Mr. EHRLICHMAN. A man named Axel Kleiboomer.

Senator GURNEY. Perhaps you can try to spell it.

Mr. EHRLICHMAN. K-l-e-i-b-o-o-m-e-r, a first-rate young man, a good lawyer, who did the, just the briefing, and he moved to me by courier at San Clemente a great deal of very useful legal reading and I spent the first 2 or 3 days out there in trying to assimilate some of this background of law.

Senator GURNEY. What dates are these?

Mr. EHRLICHMAN. This would have been the 2d, 3d, 4th of April, along in that period.

Now, the Attorney General had been at San Clemente on March 31, and I had had a brief meeting with him at that time and that he had had a private meeting with the President that day. And then he left. Finally Mr. O'Brien's arrival at San Clemente——

Senator GURNEY. Did you and the Attorney General discuss Watergate at all?

Mr. EHRLICHMAN. Yes, the fact that I had this assignment.

Senator GURNEY. But nothing of substance about facts?

Mr. EHRLICHMAN. But not facts as such. He indicated in this conversation on the 28th, just 2 days before or 3 days before, that we had everything he had, in effect, that is the substance of his responses here, and that continued to be the case in the brief conversation that I had with him before he saw the President. I told him that I was trying to get on top of this and I would need some help, some briefing help, and he said he would find the best guy he could and he did, and so we got into it.

Mr. Kleiboomer sent me two big notebooks of brief, and as I say that was sort of heavy going, and I just sat and read it.

With Mr. O'Brien's arrival, however, that was my first interview, and it brought me a whole new picture of this whole matter. A lot of information in what Mr. O'Brien gave me that I had never heard before.

Senator GURNEY. You have recounted most of that to the committee, have you not?

Mr. EHRLICHMAN. No; I am not quite through.

Senator GURNEY. All right.

Mr. EHRLICHMAN. There is quite a bit of business in those notes about money, about the involvements of people who had various funds of money and carried money around and who got money and how Liddy got money and this kind of thing which was all a brandnew subject to me at that point. I reported in quite sketchy detail to the President after I had talked to Mr. O'Brien, and he urged me at that point——

Senator GURNEY. Will you tell us very briefly what he told you about this money and other things?

Mr. EHRLICHMAN. Mr. O'Brien?

Senator GURNEY. Yes.

Mr. EHRLICHMAN. Yes. He told me about a fund of money that existed at the Committee To Re-Elect, of which he knew, and he had a piece of paper that had a lot of information on it, this was Bart Porter's account, as he called it. It was in cash from Sloan to Porter, about \$50,000 of it was pre-April 7 money, \$37,000 of it went to Gordon Liddy, and then he has a whole lot of payments out, most of which I believe Mr. Porter has testified to here.

Senator GURNEY. I see.

Well, let's not go over those that we already know.

Mr. EHRLICHMAN. Right.

Senator GURNEY. But give us new information.

Mr. EHRLICHMAN. He told me about some campaign violations, campaign funding violations, which he said the General Accounting Office knew of which involved, oh, nothing over about \$10,000 but a lot of different items. He told me about Liddy getting some money for Cuban demonstrators in Washington, D.C., you had testimony on that, I guess, and so then I got into the question of who ran the Committee To Re-Elect at various times, particularly during the planning period here. He said that Magruder said he was running the committee, but he was seeing Mr. Mitchell twice a day during this period of time and he felt it was safe to say that Mitchell was running the committee even when he was Attorney General.

Now, that is the balance of the interview with O'Brien, but that gave me a lot of perspective on this thing that I had never had before.

Senator GURNEY. Did he give you any information on the planning of the break-in?

Mr. EHRLICHMAN. Yes; and I testified with Senator Inouye about that, those four meetings and that whole business.

Senator GURNEY. Fine.

Mr. EHRLICHMAN. I had only one other substantive interview while we were at San Clemente in the remaining 3 or 4 days and that was with Mr. Kalmbach, but I became aware through Mr. Haldeman, who was reporting to me, conflicting conversations that he was having with Mitchell and Dean on this whole subject of should Dean go to the grand jury or should Dean go to the prosecutor, and we began trying to understand what lay behind this. Well, I had the background of Mr. O'Brien's interview, and we zeroed in on the fact that it had to do with these four meetings or three meetings or whatever there were, and whether or not Mr. Mitchell might have some exposure for perjury on account of having testified that the meetings were canceled or not.

Senator GURNEY. Yes.

Mr. EHRLICHMAN. And so I had Bob Haldeman trying to get a straight answer out of Mr. Mitchell and he said he could not, so I called Dick Moore and asked him if he would talk to John Mitchell because I knew they had a close relationship.

Senator GURNEY. And that was the reason for Moore's trip to New York?

Mr. EHRLICHMAN. No; it was not. It was subsequent to that trip to New York. I believe this was a telephone call which Mr. Moore said he made to John Mitchell, and Mr. Moore, I believe, also talked to Mr. Mitchell's attorney, although I am not positive of that. But in any event, Mr. Moore reported back that Mr. Mitchell was confident that he had not in any way violated any perjury statute.

and that he just did not think it was a good idea for the President's lawyer to be going out and testifying; in other words, it was an attorney-client privilege kind of position that he was contending for. It did not satisfy me.

Senator GURNEY. Mitchell now talking about Dean should not testify?

Mr. EHRLICHMAN. That is correct. This thing continued to be a nagging question, and so we called John Dean, as we were headed back, I talked to Haldeman further about this. Dean was not talking to me, all through this period of time, I had not had phone call one from him, which was very unusual because I used to hear from him from time to time on various subjects, including Watergate, but I was completely not on his telephone list and Bob Haldeman was hearing from him all the time. So we talked about what Bob Haldeman—

Senator GURNEY. Did he know that you were performing the role for the President?

Mr. EHRLICHMAN. I believe so.

Senator GURNEY. All right.

Mr. EHRLICHMAN. I believe so. I did not tell him but I believe he well knew it.

As a matter of fact, just before we departed for California this question arose of Mr. Dean being fired by his law firm for unethical conduct and I sent for his personnel package in order to check it. The personnel package arrived in Fred Fielding's arms with scotch tape around it a number of times, and he said, "What do you want this for?" And I said, "Well, there is a story"—and that refreshed my recollection, I did have one phone call from John Dean and that was on that subject. He did call me at San Clemente about that and he said, "I understand you wanted to get my personnel package," and I said "Yes, there is this story about your having been accused of this unethical conduct," and he then told me the long story which he recounted to this committee, that he eventually was able to get the attorney who made the charges to retract the charges, which satisfied me, but I think through Fielding and through my conversation with Fielding on that occasion, Mr. Dean must have known that I was actively in this.

Senator GURNEY. I see.

Mr. EHRLICHMAN. In any event, on the way back we called and asked John Dean to meet us in my office when we returned to Washington that night, and he did so.

Senator GURNEY. What date?

Mr. EHRLICHMAN. Well, April 8, 9.

Senator GURNEY. April 8 between 5 and 7 p.m.?

Mr. EHRLICHMAN. Right; that was a Saturday or Sunday—that was a Sunday night, and we had a 2-hour meeting, Bob Haldeman, John Dean, and I, to try and understand what this hangup was between Mitchell and Dean. We still did not have a feel for it. Then, for the first time, Mr. Dean talked to us about the four meetings or the three meetings back in January and February and explained some of the nuances of the coverup story with regard to Mr. Magruder and the meeting which he, Dean, Magruder, and Mitchell had had in Mr. Mitchell's law office at a time when they were gathered with the attorneys in the case to discuss grand jury testimony where the three

of them had retired to Mr. Mitchell's partners' office away from the attorneys and had discussed how to reconcile their respective recollection of the events of the early 1972 period. So that was the first time that I had from Mr. Dean directly this subject matter.

Senator GURNEY. Did he talk to you at that time about his orchestration of the perjury of Magruder?

Mr. EHRLICHMAN. He did, but he did it in very delicate terms. He did not in any way admit to me flatly that he had, in fact orchestrated it to perjury. He indicated that he had had a part in the preparation of the testimony, that there were, well, I have forgotten how, it was a very careful explanation which did not really implicate Mr. Dean in suborning to perjury by any means, but he indicated that he was well familiar with the problems between Magruder and Mitchell, on the one hand. He felt that Mr. Mitchell had problems which were causing Mr. Mitchell to say that Mr. Dean should not go and talk to the prosecutor or the grand jury and so this was very thoroughly discussed and hashed over during that meeting.

Senator GURNEY. These problems between Dean and Magruder, specifically, did they involve who was responsible for the break-in, in giving the green light to it; is that what you mean?

Mr. EHRLICHMAN. I gathered not. I think they involved disputes in their recollection as to what took place at these Liddy meetings, so-called, back in the early part of 1972.

Senator GURNEY. I see.

Did he go in at that meeting to any detail about his own involvement from June on—Dean, I am talking about—coverup?

Mr. EHRLICHMAN. No; not in evidentiary terms at all. We talked about the President's desire. The President on the flight back, as I recall, we had a meeting on the flight back of about, nearly 2 hours about this and the President decided he wanted Mr. Dean to go to the grand jury, so we conveyed that to Mr. Dean at that time.

Senator GURNEY. What was his reaction to that?

Mr. EHRLICHMAN. He was still very much interested in the question of immunity. He had some information, as I recall, about how the prosecutors felt about the White House, and so he imparted that to us, that he did not feel that anybody in the White House was a target of the prosecutors, that they were after some people who had obstructed justice, like Mardian and LaRue and people at the committee, but that he, Dean, felt that something like an estoppel or functional immunity or something could be worked out with the prosecutors if he went to testify and he seemed generally in agreement with the idea that he go and testify.

Senator GURNEY. Was there any discussion at that meeting about your role in Watergate or Haldeman's role in Watergate?

Mr. EHRLICHMAN. That did not come until this meeting of April 13.

Senator GURNEY. Well, could we go into that one?

Mr. EHRLICHMAN. Yes, sir.

Senator GURNEY. On the 13th, after 2:30 or 3 o'clock in the afternoon I had a conversation with Dean which was apparently as a result of further contacts which he had had with the prosecutor. He told me that Liddy had talked with the prosecutors off the record very completely and that they might get him to talk on the record. That his

attorney was going to try to get Mr. Mitchell to support his view that Liddy ought to talk on the record. And it turned out that that was incorrect apparently, but that was at least what he told me, and I suspect what was happening here was that the prosecutors were telling him this, trying to get him to move, to come forward and make a disclosure. Apparently, the prosecutors were playing this kind of a game with a lot of these people at this time. Saying, "so and so has talked so you better had come and talk," and passing this word along. He told me that Hunt was back testifying before the grand jury at that time but lying, that the grand jury was also taking testimony or the prosecutor, at least was taking testimony from Strachan and McCord, that there would be no indictment of anyone in the White House, that at all costs he felt a special prosecutor should be avoided in this case, because of the involvement, he said, of Caulfield and Krogh. I did not get the significance of that at the time but presumably that referred to some of Caulfield's intelligence-gathering activities and Krogh's involvement with the Plumbers.

He said, "It is a close question as to my," Dean's "liability," and I have a note that says, "Then summoned before the grand jury," but I don't know what that means any more, it does not recollect anything to me. He said, "They won't subpoena me but it is better if I cooperate."

Now, he went back into the meetings in Mitchell's office about money. I was inquiring of him now about coverup money. He said that "The way I got involved, I," Dean got involved, "was that Mitchell requested me to help."

He said, "LaRue and Mr. O'Brien would urge that money be made available. Mitchell would postpone making a decision until the last minute and the way he would get this thing off his desk would be by calling me," Dean. He said, "The U.S. attorney does not want to cause the White House problems. They tell Dean that Magruder and Mitchell are involved in the pre-Watergate matter and that LaRue, Mitchell, and Mardian are involved in the post-Watergate matter."

He said, "I don't think Jeb can crack a deal" meaning a deal with the prosecutors, "for immunity."

Then I have a little symbol on these notes which summarizes the exposure which he thought that Bob Haldeman and I had in this matter, mine being my connection with Herb Kalmbach in the provision of money for the defendants, and I have the number 350 which relates to the \$350,000 fund which presumably involved Bob Haldeman.

He said, "Neither one of these are indictable but they are going to be awkward to explain. I don't think either one of them are a problem for you in an ultimate sense." He said, "The probable scenario for the future will probably look like this. On May 1 the grand jury is going to break this case. About May 15 there are going to be indictments. Then the Attorney General is going to go to Senator Ervin and tell him that the hearings are going to prejudice the new case, and that they couldn't possibly get a fair trial. He will ask that the hearings be held off a month or two until the trial is over," and then he said, "In my personal opinion, if they are held off then there never will be Senate hearings. So I don't know what John Mitchell will do, whether he will take a plea or what he will do under those circumstances."

Almost surely if John Mitchell is indicted, Kleindienst will resign," and he said, "I think Joe Snead ought to be Acting Attorney General." Then he said, "The U.S. attorney has assured me that I am not a target, and neither is any other White House person."

Senator GURNEY. Were these notes made at the time of the meeting?

Mr. EHRLICHMAN. Yes, sir, as we talked.

Senator GURNEY. Did he tell you about all his involvement with Kalmbach, raising of money, and these methods of paying it that Ulasewicz told us about?

Mr. EHRLICHMAN. No, sir. That I hadn't heard until this testimony here.

Senator GURNEY. Or the contacts he was having with LaRue at this particular time?

Mr. EHRLICHMAN. No. You will recall he testified about five different ways, about looks of anguish, disbelief, scorn, whatnot, on my face at the time he said I was indictable. In point of fact at the time he said I was not indictable but that the Kalmbach thing might be a problem for me as being misunderstood, I said, "Well, I just don't see how it could, John," and then we discussed just that, the assumptions which I had made that there was nothing improper about it, and so on.

Senator GURNEY. At one of these meetings, and I can't remember which one, it was now because there were several in this time frame, but Dean testified, as I recall, that there was a discussion between you and him, and I think Haldeman, on the fact that the best way to settle Watergate would have Mitchell come forward, I guess that—March 21 counsel tells me. Do you recall anything on that, whether there was a discussion or agreement between you, that that was the best thing to do?

Mr. EHRLICHMAN. There never was such an agreement.

Senator GURNEY. Was there a discussion?

Mr. EHRLICHMAN. Yes. During that meeting and during subsequent meetings between Mr. Haldeman and me and meetings between Haldeman, Dean and me on the two occasions, I think we had them subsequent to that, there was a lot of speculation about John Mitchell and his place in all of this, and of course he was not saying anything to anybody at that point in time, and none of us really had a feel for this. I can recall at one of these meetings Bob Haldeman saying, "I wonder if we are taking all this anguish just to protect John Mitchell." It was a question, it was not an assertion, but I think we all shared at various times that question in our minds as to whether the beating everybody was taking on the subject of Watergate was because he was not coming forward. Now that was one of the reasons that the President asked me to meet with Mr. Mitchell on the afternoon of Saturday, April 14, to say to him for the President that if Mr. Mitchell thought his silence was somehow serving the Presidency that was a misapprehension, that the President didn't want him to sit silent if he knew something unless Mr. Mitchell felt from his own personal point that was an exercise of his own rights, in which case that was up to him. And I delivered that message to him at that time but that was a continuing question all the way through this period of time.

Senator GURNEY. Now, through this period of time, beginning with that assignment on—is it March 31?

Mr. EHRLICHMAN. Thirtieth.

Senator GURNEY. March 30, were you reporting to the President what you were finding out?

Mr. EHRLICHMAN. I reported to him after I talked with Mr. O'Brien but very briefly on that subject, and I just said: "I am beginning to get a feel for this thing but I have got so much hearsay here I don't think it's worth taking a lot of your time." He said: "You know, what are you finding out?" So I said: "Well he tells me there were these meetings back in the early times when Liddy had this plan, and so on." I took him kind of sketchily through the O'Brien business and I said: "This is hearsay two, three and in some cases four removed," and I said "We cannot move on something of this kind until we find out."

Now, in San Clemente again when we came to this funny conflict between Dean and Mitchell, I mentioned that to him, and I said "We are trying to get to the bottom of it," and two or three times he said "Have you got that figured out yet?" and when we talked on the airplane going back and we talked about Dean going to the grand jury and he said finally "I am not going to wait, he is going to go." He said: "Have you ever figured out what that is," and I said "No, we are going to see Dean. We don't know what that is."

Senator GURNEY. Well, now, did you make a complete report to the President?

Mr. EHRLICHMAN. Yes, sir.

Senator GURNEY. When was that?

Mr. EHRLICHMAN. That was on Saturday morning, April 14.

Senator GURNEY. What did you tell him?

Mr. EHRLICHMAN. Well, I told him basically a narrative of my interviews with these various people starting with O'Brien and running through everybody that is on this list except Mitchell and Magruder whom I had not yet—with whom I had not yet talked and Strachan the second time when I got into the whole question of Bob Haldeman's involvement.

Senator GURNEY. Now, so we can wrap this up and I can release the floor here, did you at that time give him a complete account of Watergate as we know it now, and if you did not, what portions did you not tell him that you didn't know? Perhaps we can get at it that way quickly.

Mr. EHRLICHMAN. Well, I didn't know, for instance, any of the behind-the-scenes business of the money beyond what Paul O'Brien had given me here and a little feel of it that Dean had given me which I think I have just described to you about as well as I can. The subsequent interviews that I had with particularly Magruder that afternoon—you see the outcome of this report to the President was, he said "I want you to talk to Magruder; I want you to talk to Mitchell," and then he also told me he wanted to find out more about Bob Haldeman's involvement. So those three followed that preliminary report and none of the things that I developed from any of them were included in it. When I completed them, then I came back and reported what those three individuals told me and laid that out for him.

Senator GURNEY. And was that a fairly complete account of Watergate?

Mr. EHRLICHMAN. It included the planning meetings, it included the two entries, and the reasons for going back. It included quite a lot but not the whole story of the coverup by any means.

Senator GURNEY. The fact that there had been one going on without all of the gory details.

Mr. EHRLICHMAN. Right, and obstruction of justice, both from the committee and Mr. Dean's part in it, I am frank to say I did not feel, since the full implication of Mr. Dean's involvement in the aftermath yet at that time.

Senator GURNEY. And what date was that?

Mr. EHRLICHMAN. That was on Saturday, April 14.

Senator GURNEY. What was the President's reaction?

Mr. EHRLICHMAN. That I must immediately advise the Attorney General, which I then did within the hour.

Senator GURNEY. And that was the end of the meeting?

Mr. EHRLICHMAN. Yes; the meetings went on, however, the following day. The President had a long meeting with the Attorney General and Mr. Petersen, who, in turn had had meetings with the prosecutor, then I had another meeting with the President because I had seen Gordon Strachan that morning while the President—Sunday morning—while the President was talking to the Attorney General and Mr. Petersen. So then, I had a further report to give to the President, Sunday following that meeting that he had had.

Senator GURNEY. Can you very briefly tell us the important parts of that?

Mr. EHRLICHMAN [conferring with counsel].

Counsel reminds me that I should say we are advised that the Attorney General had an all-night meeting Saturday night with Mr. Petersen and with the U.S. attorney and the prosecutors and posted himself on things. He then met with the President after church Sunday morning. I met with the President after that. We then had a further meeting later on that Sunday, I had one or two meetings, I forgot which, I got home and was told to turn around and come back so we had another Sunday night meeting at which the President went over and over this information and I think it was at that time that I called Mr. Gray and discovered the documents had been destroyed and so we went over that at length and implications of that and I had further conversations with the Attorney General, I guess, the next morning but this went on over a period of about 4 days, Friday, Saturday, Sunday, Monday.

Senator GURNEY. Then, it was April 17 that the President issued his statement that he was aware of new developments in Watergate?

Mr. EHRLICHMAN. Yes, sir.

Senator GURNEY. I think I had better stop there. Thank you, Mr. Ehrlichman.

Thank you very much, Mr. Chairman.

Senator ERVIN. The committee will stand in recess until 2 o'clock.

[Whereupon, at 12:20 p.m., the committee was recessed, to reconvene at 2 p.m., this same day.]

AFTERNOON SESSION, FRIDAY, JULY 27, 1973

Senator ERVIN. The committee will come to order.

Senator MONTOKA will examine the witness.

Senator MONTOKA. Thank you, Mr. Chairman.

Mr. Ehrlichman, you have testified that during the period from June 17 or shortly thereafter, up until the time you resigned your position at the White House that you intermittently kept up with the course of the investigation that was going on in-house, out of house, and otherwise?

Mr. EHRLICHMAN. Yes, sir.

Senator MONTOKA. And that shortly after June 17, according to testimony presented here by Mr. Strachan, and, I believe, confirmed by you, you were assigned to be in charge of the investigation shortly after it had occurred?

Mr. EHRLICHMAN. That is not correct, Senator.

Senator MONTOKA. All right, give me your version of it.

Mr. EHRLICHMAN. Well, I think what Mr. Strachan testified to was that in a conversation with Mr. Higby, who apparently was in Florida with the President on that weekend, Mr. Higby said that I knew about it or was in charge of it or some such thing. The fact is that on that weekend of the Watergate break-in, I, apparently, was one of the few senior members of the White House staff who was here in the city, and the rest were either with the President in Florida or somewhere else, and so for the brief time on the Monday before the President's party got back, and I think they got back late Monday, as I recall, I started the ball rolling.

Senator MONTOKA. What did you do?

Mr. EHRLICHMAN. I called Mr. Dean, who had just returned from the Philippines, and he and I had a meeting on Monday noon, and from then on, as far as I was concerned, he had the ball.

Senator MONTOKA. Who threw the ball to him?

Mr. EHRLICHMAN. I did.

Senator MONTOKA. What instructions did you give him?

Mr. EHRLICHMAN. I told him that I thought that it was important for us to keep well informed of all of the fast-breaking events in this matter in order that our press office could be fully briefed and kept up with the developing events because I, as I testified before, I saw this as a real campaign issue.

Senator MONTOKA. Did he report to you frequently on what he was uncovering?

Mr. EHRLICHMAN. I saw him a total of nine times in the next 2 weeks, which is an unusually large number of times for my contacts with Mr. Dean.

Senator MONTOKA. What did you see him about during those nine times?

Mr. EHRLICHMAN. Well, among other things—well, let me just—

Senator MONTOKA. I mean, with respect to Watergate.

Mr. EHRLICHMAN. Yes, sir.

He told me a number of things, and I have tried to make a list of them here and I will give them to you. He told me about the general facts of the surveillance of the Democratic National Committee headquarters, the fact that the Howard Johnson Motel had been employed as a listening post, the fact that a hotel room in the Watergate Hotel had been found which had some of the burglars' possessions in it. The fact that they used fictitious names and papers, and that they had large quantities of money in \$100 bills. He told me about the fact that Hunt had a safe still at the White House, and then I testified previously to the meetings, the meeting which we held Monday afternoon to try to determine the facts with regard to Hunt's employment at the White House, and that was as a result of a report from Mr. Dean.

Senator MONTROYA. Well, did you feel, Mr. Ehrlichman—I do not want to go into all the details—did you feel Mr. Dean was telling you almost everything he was uncovering on a day-by-day basis?

Mr. EHRLICHMAN. That was certainly my assumption, Senator, yes.

Senator MONTROYA. Did this continue after the first 2 weeks?

Mr. EHRLICHMAN. No, sir; before very long I left the city, I believe it was the 26th—well, I will have to check that. Well, of course the 24th and 25th I was away. The President went to Harrisburg to see the results of the Agnes flood and we were gone those 2 days, and then the 29th I left for a trip to Springfield, Ill., Lansing, Mich., northern California, and finally ended up at San Clemente.

Senator MONTROYA. I think we can save some time, Mr. Ehrlichman; I just want to go through with you, the communications that you had with Mr. Dean with respect to Watergate over the long span up until April 15, 1973.

Mr. EHRLICHMAN. All right, sir. I think—

Senator MONTROYA. I mean in a general way.

Mr. EHRLICHMAN. I have that in summary form and perhaps I can give that to you rather quickly. In the month of June I saw him nine times, and eight of those times related to Watergate.

Senator MONTROYA. All right.

Mr. EHRLICHMAN. In the month of July, I saw him three times and only two times related to Watergate. In the month of August, four times of which two—no, pardon me, none related to Watergate. September, three times, and I am not able to tell you as to what. One of those meetings was with regard to the foreign grain sales and I don't know what the other two were. October, I saw him twice; once was the Common Cause lawsuit and I don't know what the other one was. November, I saw him four times; one was with regard to the Watergate, two with regard to Segretti which I guess you lump into that general subject. December, five times, twice on the subject of Watergate.

January, seven times of which Watergate could be considered to have been the subject of three of those meetings. February, five times, three of which, including La Costa, were on the subject of Watergate. March, three times, and one of those times was with regard to the Hunt blackmail; well, actually two of those were, and the other one the question of testimonial appearance.

Senator MONTROYA. Was that in March?

Mr. EHRLICHMAN. Yes, sir.

Senator MONTROYA. What about the January meeting, didn't you testify about the January meeting with respect to Mr. Hunt?

Mr. EHRLICHMAN. Yes, and that is one of the three, that is actually two of the three that I mentioned.

Senator MONTROYA. All right.

Mr. EHRLICHMAN. And April, three times, and all of those were Watergate matters.

Senator MONTROYA. So you, in effect, met quite a few times with Mr. Dean about Watergate?

Mr. EHRLICHMAN. Yes, sir.

Senator MONTROYA. Would you say that during those times that you met with him that you discussed fully all aspects of Watergate, White House possible involvement and also possible involvement of personnel at the CRP?

Mr. EHRLICHMAN. Well, as it turned out, no. I thought so at the time but I now know that that was not the case.

Senator MONTROYA. Well, were you engaging in speculation with Mr. Dean as to who might be involved as a result of these conversations?

Mr. EHRLICHMAN. On occasion we did.

Senator MONTROYA. Quite a few figures or names were discussed during your conversations; is that not correct?

Mr. EHRLICHMAN. You mean a great number of people?

Senator MONTROYA. Yes.

Mr. EHRLICHMAN. No, I wouldn't say that, Senator.

Senator MONTROYA. Well, then, as a result, did you use this information and what you independently collected as a basis for briefing Mr. Ziegler preliminary to any press conferences that you might have had—that he might have had?

Mr. EHRLICHMAN. Not inevitably, no. There would be time, for instance, when I was not with Mr. Ziegler. I had an independent travel schedule and very often Mr. Ziegler would have briefings and I wouldn't be available or he would be out of town with the President and I would be here in Washington. But we tried as nearly as possible to talk over, particularly technical matters.

For instance, when the civil depositions were being taken, Mr. Ziegler and I, I recall, had a conversation about a civil deposition, what the rules of evidence were, why hearsay could come into a civil deposition where it couldn't come into a trial. Things of that nature.

Senator MONTROYA. The point I want to make, Mr. Ehrlichman, that you have testified here that on numerous occasions you did brief Mr. Ziegler preliminary to any press conferences that he might have.

Mr. EHRLICHMAN. Well, I don't think I said it quite that way, Senator.

Senator MONTROYA. How did you say it?

Mr. EHRLICHMAN. What I attempted to impart was that on more or less a daily basis Mr. Ziegler and I would try to touch base about any current issues that needed my assistance, and not in every case would he need my assistance for some of these things. But where we had, for instance, the issue of the Clean Water bill and the President's possible veto of that bill, where we had the spending limit that was a hot issue in the Congress, Mr. Ziegler and I would sit down and we would talk through what the central issues were, why the President

took the position he did, what the other view was, to try to give him a working knowledge of the subject matter and we tried to do that with various aspects of this case as it went along.

Senator MONTROYA. But did you ever brief him on Watergate, on the part or concern of the White House and so forth?

Mr. EHRLICHMAN. I don't know quite what you mean by brief.

Senator MONTROYA. Did you provide any input—

Mr. EHRLICHMAN. I am sure I did.

Senator MONTROYA [continuing]. Into the background that went into the press conferences?

Mr. EHRLICHMAN. I am sure that I did at times.

Senator MONTROYA. All right.

Now, there were quite a few pronouncements by the White House, by the President with respect to the Watergate affair, and I am going to relate those in sequence.

On August 29, 1972, the President, in response to a question stated, and this is part of his answer:

In addition to that within our own staff under my direction counsel to the President, Mr. Dean, has conducted a complete investigation of all leads which might involve any present members of the White House staff or anybody in the Government. I can say categorically that his investigation indicates that no one in the White House staff, no one in this administration presently employed was involved in this bizarre, very bizarre incident.

Then on a subsequent date, the President in his October 5, 1972, conference stated in response to a reporter's question as follows:

Now, when we talk about a clean breast, let us look at what has happened. The FBI assigned 133 agents to this investigation. It followed out 1,800 leads. It conducted 1,500 interviews.

Then subsequently, during the press conference of April 17, 1973, the President stated as follows:

On March 21, as a result of serious charges which came to my attention, some of which were publicly reported, I began intensive new inquiries into this whole matter. Last Sunday afternoon the Attorney General, Assistant Attorney General Petersen, and I met at length in the EOB to review the facts which had come to me in my investigation and also to review the progress of the Department of Justice investigation.

Then he stated:

As a result, on March 21, I personally assumed the responsibility for coordinating intensive new inquiries into the matter, and I personally ordered those conducting the investigation to get all the facts and to report them directly to me right here in this office.

That was prior to the time that he assigned responsibility to you to conduct a further inquiry, which was on March 30, 1973, is that correct?

Mr. EHRLICHMAN. Well, I thought that press conference, you said it was April 17, is that not correct? That would have been after.

Senator MONTROYA. Yes, but I am referring to the date of March 21, which you recited.

Mr. EHRLICHMAN. Oh, yes, indeed.

Senator MONTROYA. Now, up to that time, Mr. Dean had been talking to you, other people in the White House had been talking to you, and there had been quite a few articles in the Washington Post by Mr. Woodward and Mr. Bernstein, and, in fact, most of the information

about which you were inquiring with all these FBI people, had already appeared in the Washington Post. Now, did you read the Washington Post on or about that time?

Mr. EHRLICHMAN. What time, Senator?

Senator MONTOYA. During the course of your different conferences with Mr. Dean, during the course of your different inquiries. Were you reading the Washington Post about what was being uncovered through Woodward and Mr. Bernstein?

Mr. EHRLICHMAN. Well, I would not certainly want to leave the impression that the White House relied on the Washington Post for reliable information very much at the time. The fact is that our news summary contained digests of what a great number of newspapers were printing, both about the Watergate and other matters.

Senator MONTOYA. But, as a matter of fact, they were uncovering more than all these FBI people were.

Mr. EHRLICHMAN. No, sir.

Senator MONTOYA. At least, there has been no information coming to us that was more accurate than what these reporters were uncovering at the time.

Mr. EHRLICHMAN. Then, I think you are in trouble, Senator.

Senator MONTOYA. Well, I think the whole country is in trouble.

Mr. EHRLICHMAN. I submit to you, sir, that the FBI reports, which we were receiving at that time, on the face of them and from everything we knew about it and from everything the Attorney General was telling us about it, and everything that the prosecuting attorneys were telling us, could be relied upon.

Senator MONTOYA. All right. Now, let me ask you this question. You said that you conducted an inquiry pursuant to instructions from the President, instructions which you received on March 30. Now, who did you investigate, who did you interview, and with what objective in mind were you conducting this inquiry?

Mr. EHRLICHMAN. I was, as I say, it was not really an investigation in the technical sense of the word, and I have declined to identify it as such at all times. But, as I said before, the people whom I interviewed included Paul O'Brien, Herbert Kalmbach, John Dean, Gordon Strachan, Charles Colson, John Mitchell, and Jeb Magruder. I had a telephone conversation with Mr. Gray, which may or may not be considered to be included in that, and Mr. Krogh.

Senator MONTOYA. Did you interview Mr. LaRue?

Mr. EHRLICHMAN. No, sir.

Senator MONTOYA. Mr. Mardian?

Mr. EHRLICHMAN. No.

Senator MONTOYA. Mr. Kalmbach?

Mr. EHRLICHMAN. Yes.

Senator MONTOYA. Mr. Stans?

Mr. EHRLICHMAN. No.

Senator MONTOYA. Mr. Sloan?

Mr. EHRLICHMAN. No.

Senator MONTOYA. In fact, you turned him out of your office, so to speak.

Mr. EHRLICHMAN. No, I do not believe that is quite fair, Senator. What I did was, I think what I should have done, which was to say to

him "before you talk to somebody in my situation go and talk to a lawyer since you are the treasurer and you tell me you have got the legal liability for all this and you have not talked to a lawyer; do go talk to a lawyer first."

Senator MONTROYA. All right. Would you say that you conducted very intensive interviews with these people?

Mr. EHRLICHMAN. As I said, Senator, I can't claim this to be an exhaustive investigation. I conducted, I think, reasonably thorough interviews. They lasted between an hour and 2 hours, most of them.

Senator MONTROYA. Were they conducted in your office?

Mr. EHRLICHMAN. Sir?

Senator MONTROYA. Were they conducted in your office?

Mr. EHRLICHMAN. Not in every case. My principal concern was to try and get a feel whether anybody in the White House was involved in this. I felt that is the place I had to begin. So most of my questions were not directed to what people like Mr. Mardian or Mr. LaRue did at the committee. Occasionally people told me those things. But my principal focus was to say "What do you know about the people in the White House? Do you know about anybody else in the White House who might have been involved?" or if they were talking about an individual in the White House I would say "What else do you know about him that might in any way involve him in this?" and that was my principal focus. But the other part of my job, other than just interviewing these few people, was to try and get on top of these very complex law questions which Mr. Dean had been working with and which I had not, and it took a great deal of my time, and I might say, this was the—one of the President's principal focuses at this time—was this dilemma of separation of powers, executive privilege, attorney-client privilege, the whole legal underpinning of this process.

Senator MONTROYA. If you will pardon me, Mr. Ehrlichman, you testified about that this morning and I don't want to appear repetitious in my questioning and I don't want you to appear repetitious in your answers. I am merely interested in trying to ascertain from you what type of an inquiry.

Mr. EHRLICHMAN. Yes, sir.

Senator MONTROYA. Now, during the interviews which you had in your office, did you on occasion tape the conversations with these people?

Mr. EHRLICHMAN. On two occasions.

Senator MONTROYA. Which were those occasions?

Mr. EHRLICHMAN. Mr. Mitchell and Mr. Magruder.

Senator MONTROYA. Where are those tapes?

Mr. EHRLICHMAN. In the possession of your staff.

Senator MONTROYA. All right.

Did you transcribe any interviews or arrange for their transcription?

Mr. EHRLICHMAN. In the sense of sitting down and dictating a summary or anything of that kind?

Senator MONTROYA. Yes.

Mr. EHRLICHMAN. Yes, sir.

Senator MONTROYA. Who has those interviews?

Mr. EHRLICHMAN. Well, I think what I did was to turn over my handwritten notes to the committee staff. There is one such transcrip-

tion of my interview with Mr. Kalmbach which I don't think that I have given to the committee staff; I am not sure.

Senator MONTTOYA. Are you prepared to give it to us?

Mr. EHRLICHMAN. Oh, yes; certainly, certainly.

Senator MONTTOYA. Would you do that?

Mr. EHRLICHMAN. It may be that they have it. That question came up this morning and I don't think we decided for sure.

Mr. DASH. We have a phone call transcription, not an interview.

Mr. EHRLICHMAN. No, no; this is a narrative that I dictated after my interview with Mr. Kalmbach.

Mr. DASH. No; we do not have that transcript.

Mr. WILSON. Did I not give you, Mr. Dash—I think I gave to the U.S. attorney's office less than a one-page memo of a meeting between Mr. Ehrlichman and Mr. Kalmbach on April 6, 1973?

Mr. DASH. No; Mr. Wilson, I have no recollection of that.

Mr. WILSON. We will supply it right now.

Mr. DASH. You may have given it to the prosecutor's office.

Mr. WILSON. Beg pardon?

Mr. DASH. You may have given it to the prosecutor's office but not to this committee.

Mr. WILSON. I always meant to give you the same things, but perhaps I didn't do it.

Mr. DASH. I know you have tried, but if you have it, we would like to have it.

Mr. WILSON. Sure.

Senator MONTTOYA. Who else did you take notes on?

Mr. EHRLICHMAN. Just those that I mentioned this morning, Senator. Do you want me to go through that list again?

Senator MONTTOYA. No; I don't. I merely want you to tell this committee what did you ascertain as a result of these interviews with respect to each of the individuals.

Did they convey to you any indication that they might have been involved in the Watergate affair prior to June 17 or in the coverup after June 17?

Mr. EHRLICHMAN. Yes, sir, they did.

Senator MONTTOYA. All right.

Will you name those names?

Mr. EHRLICHMAN. Yes, sir. I wonder if I could refer to my notes in order to do that accurately?

Senator MONTTOYA. Certainly you may.

Mr. EHRLICHMAN [conferring with counsel]. I had this morning described fully the contents of my interview with Mr. O'Brien, I believe. And also my interview with Mr. Dean. The one which remains, which is responsive to your question, I think, is my interview with Mr. Magruder on April 14 at 4 o'clock in the afternoon. His attorneys, Mr. Sharp and Mr. Bierbower, were with him at the time of the interview and they had just come from an interview with the U.S. attorney. The interview took about, I would guess about 1½ hours, and if you like, Senator, I can just take you quickly through the narrative of what Mr. Magruder told me or I can pick things out, if you are interested in something particularly.

Senator MONTTOYA. Just give me your conclusions from that interview.

Mr. EHRLICHMAN. The conclusions from the interview were that Mr. Magruder and, according to him, Mr. Mitchell, and Mr. LaRue, participated in an express and specific approval of the plan to break into and bug the Democratic National Committee headquarters. That this was an agreement or an approval which occurred in Key Biscayne at a meeting attended by the three of them, and in addition to that particular project, McGovern headquarters and the Fontainebleau headquarters of the Democratic Convention were likewise to be bugged.

Senator MONTROYA. What date was this, again?

Mr. EHRLICHMAN. This was an interview which I held on April 14, 1973.

Senator MONTROYA. All right; proceed.

Mr. EHRLICHMAN. That, and here you understand, this is what Mr. Magruder is saying to me, I cannot vouch for the truth of this but it is what he reported to me. That the proposal which was approved at that time, had its genesis in a \$1 million proposal which Mr. Dean and Mr. Liddy prepared. I asked him specifically about Mr. Dean because, as I say, I was focusing on White House people, and his description of Mr. Dean's participation in that planning was quite active. Mr. Liddy told Mr. Magruder, he said, that Mr. Dean had authorized the \$1 million figure as the beginning budget level.

Senator MONTROYA. Did you, from your knowledge of the White House and the assignment of Mr. Dean, reach a determination that Mr. Dean had that kind of authority?

Mr. EHRLICHMAN. Oh, no, no, indeed.

Senator MONTROYA. You did not believe that, did you?

Mr. EHRLICHMAN. What Mr. Magruder was telling me?

Senator MONTROYA. Yes.

Mr. EHRLICHMAN. I did not know what to believe at this time, Senator. I was getting so many different hearsay stories from so many different people, I was not trying to evaluate what to believe and what not to believe.

Senator MONTROYA. All right; proceed.

Mr. EHRLICHMAN. He said, he took me through the four meetings in early 1972.

Senator MONTROYA. I believe you testified to that and I do not want to go into repetition.

Mr. EHRLICHMAN. Yes; this is out of Magruder's mouth, and then he said at some point in time he informed Mr. Strachan, who was his primary contact at the White House, that they had an intelligence capability. He said, "I got no problems from Mr. Strachan and so I read that as an OK from higher up."

I asked him whether he had any knowledge of whether anyone higher up than Mr. Strachan in the White House had in fact approved this, and he said he had no knowledge of any higher ups having done so, only—and the only people in the White House that he focused on as having any connection whatsoever with this were Mr. Colson, Mr. Strachan, Mr. Dean, and Mr. Howard.

Senator MONTROYA. May I interject here. What particular authority did Mr. Strachan have vis-a-vis the White House?

Mr. EHRLICHMAN. Mr. Strachan was about a fourth-level White House staffer with almost no authority of his own.

Senator MONTTOYA. Well, what particular assignment did he have during the campaign? I understood that he was going from Mr. Haldeman's office to the CRP and back and forth. Did you know of this assignment?

Mr. EHRLICHMAN. No, sir.

Senator MONTTOYA. Have you since found out about this assignment?

Mr. EHRLICHMAN. In the course of these hearings I have learned a great deal more than I ever learned when I was in the White House.

Senator MONTTOYA. You mean you did not find out while you were at the White House about Mr. Strachan's assignment?

Mr. EHRLICHMAN. I knew almost nothing about the scope of Mr. Strachan's assignment while he was in the White House until late, you know, in the March-April period, when I got into it and I began interviewing people and he was one of the people I interviewed.

Senator MONTTOYA. What did you find out about him?

Mr. EHRLICHMAN. At that time?

Senator MONTTOYA. Yes.

Mr. EHRLICHMAN. That he was the liaison man between Mr. Haldeman and the Committee To Re-Elect for the purpose of keeping both ends of his liaison informed of the acts and desires of the other.

Senator MONTTOYA. Did you know him?

Mr. EHRLICHMAN. Yes, sir.

Senator MONTTOYA. Did you know him to be a very reliable young man?

Mr. EHRLICHMAN. Well, I did not know him well enough to form an opinion as to his reliability.

Senator MONTTOYA. If he conveyed anything to the CRP or brought anything to Mr. Haldeman from the CRP, would you say that he was carrying out his assignment properly?

Mr. EHRLICHMAN. I could not speculate as to that, sir.

Senator MONTTOYA. Why can't you?

Mr. EHRLICHMAN. Well, I just do not have that kind of knowledge. Now, so far as reliability is concerned, something occurs to me that perhaps you ought to know. My first interview with Mr. Strachan was on the occasion of his having just returned from the grand jury, and he came in rather shaken and told me that he did not know what to do, and he was looking for somebody to give him some advice. He said that he had just come back from testifying to the grand jury that he had delivered \$350,000 to Mr. LaRue, and he said:

As soon as I left there I knew that was wrong. I had not delivered \$350,000 to Mr. LaRue, I had delivered some lesser sum because I remember that they took some money out or I took some money out.

I have forgotten how he put it, but some money had been taken out for advertising. "What should I do?" And I said, "Well, do you have an attorney," and he said, "No, I do not," and I said:

That is the first thing I think you ought to do, is get some advice. The second thing, it seems to me, that you ought to do, subject to your attorney's advice, is to go and tell the prosecutor you think you have made a mistake in your testimony.

But that is probably the only real gage I have of Mr. Strachan's testimonial reliability.

Senator MONTTOYA. Then, what did you find out about—what conclusion did you reach with respect to Mr. Strachan as a result of the interviews that you had?

Mr. EHRLICHMAN. What he told me in the second interview I had with him I felt was correct and the truth and that he was trying very hard to tell me everything he knew. I had a favorable impression of what he told me, that is, of the—of his attempt to tell the truth.

Senator MONTROYA. The point I am trying to make is, did you reach any conclusion from the interviews with respect to him as to whether or not he was involved either in the pre-June 17 complicity or after?

Mr. EHRLICHMAN. I see. He told me that he had received from the Committee To Re-Elect notice that they had an intelligence capability. He—and I confronted him with what Mr. Magruder had alleged which was that Mr. Magruder had sent over to him a budget which included specific reference to bugging and he said no he would have remembered if anything like that had come over. He was sure he had never seen anything like that. He said that he did receive from Mr. Magruder some material designated Sedan Chair, and it looked to him like synopses of wiretap information. Of course, we have learned since that Sedan Chair was not a wiretap but that was the only thing he said he received. He said he got no Gemstone material at all.

Senator MONTROYA. Mr. Ehrlichman, I am just interested in what you concluded as a result of the interviews with respect to these individuals.

Mr. EHRLICHMAN. All right. My conclusion with regard to Mr. Strachan was that he was a messenger, that he was not an active planner or executor of any plan but simply a conveyor back and forth.

Senator MONTROYA. All right. Now what conclusion did you reach with respect to Mr. Kalmbach?

Mr. EHRLICHMAN. My conclusion after talking with Mr. Kalmbach, as you will see in this memorandum that we have now given the staff, I take it, perhaps it is best if I simply read you a short portion of that as my then contemporaneous conclusion. That will probably be the best evidence. Do you have that, counsel?

Mr. WILSON. I gave them the only copy I had.

Mr. EHRLICHMAN. Do you want to read it?

Senator MONTROYA. Let me, I am running out of time now.

Mr. EHRLICHMAN. All right, very shortly, Senator—

Senator MONTROYA. I merely wanted to get an indication as to what kind of an inquiry you had conducted with respect to each individual.

Mr. EHRLICHMAN. All right. My inquiry with him was as to his money-raising efforts and whether or not he knew, either directly or whether he knew circumstances surrounding his efforts which might have put him on notice that he was engaged in an effort to buy the silence of defendants and I was satisfied that he did not know.

Senator MONTROYA. All right, what inquiry did you make about Mr. Kalmbach?

Mr. EHRLICHMAN. I interviewed Mr. Kalmbach.

Senator MONTROYA. Just briefly, what inquiry did you—you interviewed him?

Mr. EHRLICHMAN. Yes, sir.

Senator MONTROYA. All right. And you taped his conversation?

Mr. EHRLICHMAN. No, sir. I made this memorandum afterward which I have given to the staff.

Senator MONTROYA. All right.

Mr. EHRLICHMAN. In that I think you will see that it's my conclusion that he acted in the best of faith thinking that he was simply engaged in raising money for the defense fund purposes that he has testified to.

Senator MONTOKA. All right. Then how many interviews did you conduct as a result of your being commissioned by the President to go into this?

Mr. EHRLICHMAN. Well, let me refer to my list again. Ten.

Senator MONTOKA. Ten?

Mr. EHRLICHMAN. Yes, sir.

Senator MONTOKA. How long did it take you to conduct these interviews?

Mr. EHRLICHMAN. Well, I did this in the period between April 5 and April 14.

Senator MONTOKA. The President indicated that he had also—

Mr. EHRLICHMAN. Excuse me, I am sorry, Senator, April 15, I beg your pardon because I saw Mr. Strachan at 9 o'clock on Sunday morning the 15th.

Senator MONTOKA. All right.

Now, what was this statement of the President all about when he stated that on March 21 as a result of serious charges "which came to my attention, some of which were publicly reported, I began intensive new inquiries into this whole matter."

What did he mean by that?

Mr. EHRLICHMAN. Well, I think what he meant by that was the series of events starting March 21 and culminating April 17 which would have been his conversation with Mr. Dean on the 21st; the McCord letter to Judge Sirica on what, the 23d or whatever it was; his sending Mr. Dean to Camp David to write out his statement; Mr. Dean's return without the statement; his turning the investigation over, taking it from Mr. Dean, his turning the inquiry over to me; my efforts to talk to witnesses through this time; the parallel efforts, and I don't mean to in any way diminish the efforts of the investigators in the Department of Justice and in the prosecutor's office who were doing an extraordinarily effective job right at this time.

You see, when I talked to Mr. Magruder, for instance, he had already been to see the U.S. attorney and told him everything as a result of their efforts. So these were all parallel efforts going on and there was a lot of reporting. The President had his meeting with the Attorney General and Mr. Petersen on that Sunday, and they compared notes as to all of these investigations, and then this all came to a head on that following Tuesday.

Senator MONTOKA. Would you then say that up until March you were convinced, and the President was convinced in the White House that there was no White House involvement?

Mr. EHRLICHMAN. Yes, sir.

Senator MONTOKA. You were convinced up to that time?

Mr. EHRLICHMAN. Yes, sir, and I was saying that all across the country because I believed it.

Senator MONTOKA. And you kept saying this to the President on the basis of information which you were receiving from Mr. Dean and others?

Mr. EHRLICHMAN. In the best of faith, yes, sir.

Senator MONTROYA. All right.

Then why on January 3 were you so concerned that Mr. Hunt might blackmail the White House?

Mr. EHRLICHMAN. Why was I so concerned?

Senator MONTROYA. Yes.

Mr. EHRLICHMAN. Well, any time that somebody levels a blackmail threat against—well, excuse me, that happened March 20, that did not happen January 3.

Senator MONTROYA. Didn't you meet on January 3 with respect to the Hunt letter?

Mr. EHRLICHMAN. Oh, but that was not blackmail.

Senator MONTROYA. Well he was asking for help.

Mr. EHRLICHMAN. Yes, but he was not making any threats that I knew of.

Senator MONTROYA. Well, I believe the testimony which has been adduced here indicated that Mr. Hunt was getting kind of nervous, that Mr. Parkinson imparted this information which he received from Mr. Bittman to Mr. Mitchell, and Mr. Mitchell, in turn, imparted it to the White House and then this conference was convoked where you, Mr. Dean, Mr. Colson, and others were present about the Hunt letter.

Mr. EHRLICHMAN. I am sorry, Senator, I don't think that is the way that meeting came about.

Senator MONTROYA. All right, tell me how it came about.

Mr. EHRLICHMAN. My understanding is that Mr. Hunt had written a letter to Mr. Colson, and I recall seeing the letter, and that that plus a telephone call from either Mr. Hunt or Mr. Bittman, and I don't remember which, to Mr. Colson's office, precipitated the meeting.

Senator MONTROYA. Why would you—

Senator ERVIN. There is a vote on in the Senate and I am going to have to recess.

[Recess.]

Senator ERVIN. You may proceed, Senator Montoya.

Senator MONTROYA. Mr. Ehrlichman, I believe the last question I asked you was why was there so much concern around the White House about clemency for Mr. Hunt on January 3 in view of the fact that you have testified that up to that time you were all convinced there was no White House involvement.

Mr. EHRLICHMAN. Well, if I could first take the assumption of your question, Senator, I can't agree there was so much concern about the White House for clemency for Mr. Hunt. The fact is—

Senator MONTROYA. Why did you have this conference?

Mr. EHRLICHMAN. We had the conference because Mr. Colson had a very strong concern about Mr. Hunt, and his melancholia, and his frame of mind, and his letter which said that Mr. Colson, in effect, had abandoned his friend and Mr. Colson was moved by this.

It was the occasion for discussing what kind of a contact Mr. Colson might make with Mr. Hunt to reassure him on a personal basis. The purpose of the meeting was the—Mr. Colson's strong desire to make a response to that letter which was a very compelling letter. I believe it is in your exhibits. So that is how the meeting originated.

Senator MONTROYA. Well, Mr. Colson testified about this meeting in the context of Mr. Hunt being very concerned and that he might blow

the lid off and indicate something which would be unsavory to the White House?

Mr. EHRLICHMAN. Mr. Colson said that?

Senator MONTOYA. I believe he did or someone else in the testimony of these hearings.

Mr. EHRLICHMAN. Mr. Colson hasn't been here yet. Senator, you must mean someone else.

Senator MONTOYA. I don't mean Mr. Colson, Mr. Magruder.

Mr. EHRLICHMAN. Mr. Magruder wasn't there.

Senator MONTOYA. All right.

There was talk about clemency for some of the defendants at the White House, was there not?

Mr. EHRLICHMAN. At that meeting there was talk about it and the talk was that under no circumstances should it be offered nor should it even be discussed.

Senator MONTOYA. Did you communicate this to Mr. Colson?

Mr. EHRLICHMAN. Yes, sir.

Senator MONTOYA. Were you aware that Mr. Caulfield had communicated an offer of clemency to Mr. McCord?

Mr. EHRLICHMAN. At that time?

Senator MONTOYA. No, I believe that was right after January 3.

Mr. EHRLICHMAN. Oh, you mean at some other time did I become aware of it.

Senator MONTOYA. Yes.

Mr. EHRLICHMAN. I heard of it quite a long time after it happened, yes, sir, and I heard of it during my inquiry, during the interviews of some of these people.

Senator MONTOYA. Did Mr. Caulfield ever communicate to you that pursuant to word from Mr. Dean he had communicated an offer of clemency to Mr. McCord?

Mr. EHRLICHMAN. No, sir.

Senator MONTOYA. I will go to another matter. I believe you have testified here that when the President authorized an investigation of the Ellsberg matter that he talked to Mr. Krogh and that in that discussion there was no contemplation that a burglary should be committed.

Mr. EHRLICHMAN. It was never discussed.

Senator MONTOYA. All right. And I believe you also stated that you were unaware that Mr. Krogh or anyone else had given the authority, but your testimony was that you assumed that Mr. Krogh had given permission to go into the Ellsberg psychiatrist's office. You assumed.

Mr. EHRLICHMAN. Yes, sir.

Senator MONTOYA. All right.

Now, let us go into the statute which is 18 U.S.C. 2511, subparagraph 3. I believe that you and your attorney have tried to justify this as a legal venture and not a burglary because of this subparagraph 3, which gives to the President implied powers over the security of our Nation.

Now, if this particular thing or provision contemplates that the President take such measures in order for them to be valid, if your interpretation is correct, the President did not take any measure to give authority, Mr. Krogh, as you have testified, you just assumed he had authority, but you are not sure that he did and, therefore, there was no authority imparted from the only person that could give that

authority for the commission of this burglary and, therefore, wouldn't you say that it was not a legal venture in promotion of the internal security of this country?

Mr. EHRLICHMAN. Well, Senator, my assumption was not with regard to whether Mr. Krogh had authority. My assumption was with regard to whether he had authorized the act by Mr. Hunt and Mr. Liddy.

Senator MONTOLA. How could he authorize it if the President had not contemplated it when he gave the original charter for this investigation to Mr. Krogh?

Mr. EHRLICHMAN. Well, I suppose it is the difference between a general agency and what we used to call a special agency in law school.

Senator MONTOLA. But wouldn't you say that in view of the provision upon which you are relying that specific authority from the only one who could give it—namely, the President of the United States—was necessary in order to make it valid?

Mr. EHRLICHMAN. No; I would think that since we are talking with a constitutional rather than a statutory power, that a general delegation of capacity to Mr. Krogh would be required rather than some specific authorization of some specific act.

Senator MONTOLA. But there is not a statutory power. This is a recital of a reservoir of constitutional power in the President.

Mr. EHRLICHMAN. That is what I just said, Senator.

Senator MONTOLA. So, in view of the fact that there was no specific authority—I will ask you this question again—by the President, and in view of the fact that you are not sure whether Mr. Krogh had any authority to do so, and he certainly did not under the wording of this, would you say that that burglary was legal?

Mr. EHRLICHMAN. Well, again, you are misstating what I understand about Mr. Krogh's authority. The thing that I say I had to assume was what passed between Mr. Krogh and Messrs. Hunt and Liddy, because I do not know. I do know what passed between the President and Mr. Krogh and that was a delegation of very general authority on this subject, and, in my opinion, that delegation of authority was very broad, and very deep.

Senator MONTOLA. All right. Now, I might say to you Mr. Ehrlichman, that your testimony has been contradicted by many of the witnesses who have appeared heretofore, and I believe that this committee has the task of judging your testimony against the testimony of others with respect to other matters of substance, and these other people are Mr. Dean, Mr. Mitchell, Mr. Magruder, Mr. Strachan, Mr. LaRue, Mr. Kalmbach, and Mr. Sloan. I believe you have indicated in your testimony something contradictory of theirs in one manner or another, in one detail or another, and it is the duty of this committee to judge your testimony against this background and against all these threads of testimony offered by these individuals.

That is all I have to say Mr. Chairman.

Mr. EHRLICHMAN. Well, I would not want your remarks to go uncontradicted, Mr., or Senator Montoya. I am not aware of conflicts between my testimony and some of those that you read, No. 1. No. 2, I understand the function of the committee to be legislative rather than adjudicatory. So I don't think that you are necessarily in the business

of making findings of fact as to the testimony of specific witnesses. But passing that for the moment, it seems to me that whether there are conflicts in the evidence is not nearly as important as to whether or not conflicts in the evidence are supported, one side or the other, by corroborating independent evidence on material points, and I hope that you will find it possible, and the other members of the committee will find it possible, to examine the various extrinsic pieces of evidence such as the letter from the CIA to the FBI and things of that kind, to determine which of conflicting testimony is entitled to the greater weight.

Senator MONTROYA. I am sure that we will do that. I personally will, I can assure you, Mr. Ehrlichman.

Mr. EHRLICHMAN. Thank you, Senator.

Senator MONTROYA. I will weigh the weight of the testimony, and I will also give consideration to any documentary evidence that you present here and certainly I think all the members will.

Mr. EHRLICHMAN. Good, thank you.

Senator ERVIN. I think one of the prime functions of this committee, outside of making recommendations for legislation, is to find the facts and what the facts are—whether the testimony is from witnesses or from documents. Senator Weicker.

Mr. WILSON. Excuse me, Mr. Chairman, may the notes of the meeting of April 6 which I passed to the Chair be included in the record at this point?

Senator ERVIN. Yes; the reporter will mark it as an exhibit and admit it as such.

[The document referred to was marked exhibit No. 100.*]

Mr. WILSON. Thank you, sir. Excuse me Senator Weicker.

Senator WEICKER. Mr. Chairman, I think a bell has just rung for a vote and this might be the proper time to recess.

Senator ERVIN. We will recess and hurry back as fast as we can.

[Recess.]

Senator ERVIN. Senator Weicker, you may examine the witness.

Senator WEICKER. Mr. Ehrlichman, I am going to refer to your opening statement before the committee and specifically on page 11 of that opening statement, and in the bottom of paragraph you state:

The counsel has always had political duties. The President is the Nation's Chief Executive but he is also by longstanding tradition his political party's leader. Any President has a political role to play whether he is going to run for re-election or not. But if he is a candidate then he is both an executive and a practicing politician. Every such politician wants information, and the President, in his politician role, is no different from the others. He needs and wants information about issues, supporters, opponents, and every other political subject known to man. For the year 1969 to 1970 when I left the post of counsel, I attempted to gather purely political information for the President as I was expected to do, out of real concern for reciprocity, attempted to use only conventional nongovernmental sources of information; as one might hire political aides in a political campaign. Tony Ulasewicz was hired to do this chore of information-gathering. He was paid from existing Nixon political money by check under an appropriate employer's tax number. Among other assignments he executed potential opposition for vulnerability. So far as I am aware, in my tenure as counsel, Mr. Ulasewicz conducted his assignments legally and properly in all respects.

*See p. 2947.

I would like to read to you from testimony given by Mr. Ulasewicz to this committee.

Senator WEICKER. Now, I would like to, if I could, try to get into the general nature of the investigations, the other investigations which you conducted. Is it a fact that these investigations or some of these investigations were background checks on individuals intended to develop questionable facets of the personal lives of these individuals?

Mr. ULASEWICZ. That is correct, sir.

Senator WEICKER. Now, when we are talking about questionable facets, would this include sexual habits?

Mr. ULASEWICZ. These were allegations and that might be included in the category, I guess.

Senator WEICKER. That would be included in the category. Drinking habits?

Mr. ULASEWICZ. Yes, sir.

Senator WEICKER. Domestic problems?

Mr. ULASEWICZ. Yes, sir.

Senator WEICKER. Personal social activities?

Mr. ULASEWICZ. Yes, sir.

And then finally, in concluding his testimony whereby he characterizes his information-gathering, I will continue to read:

Senator WEICKER. I repeat my question, how would you categorize the information you turned over to Mr. Caulfield?

Mr. ULASEWICZ. I would say——

Senator WEICKER. Was it of a national security nature?

Mr. ULASEWICZ. No, sir.

Senator WEICKER. Was it of a domestic security nature?

Mr. ULASEWICZ. No, sir.

Senator WEICKER. Dirt?

Mr. ULASEWICZ. No, it would be of a political nature.

Senator WEICKER. Political dirt?

Mr. ULASEWICZ. All right, sir.

Now, since in your opening statement you indicated that you were the one who was responsible when you were counsel to the President in turning over political information or information of issues, supporters of opponents or any other, and since you are the one who hired Mr. Ulasewicz, I wonder if you might not comment to this committee as to the information which you turned over to the President and again on the characterization that Mr. Ulasewicz gave his own job.

Mr. EHRLICHMAN. I do not know what period Mr. Ulasewicz was referring to in your, in response to your question, Senator. I can only speak for about 6 or 7 months that his tenure and mine overlapped. I think that the investigations which he did at the time that I was counsel in 1969 and the first month or two of 1970, perhaps, did not in any way relate to the political campaign of 1972. So, I do not know whether this is in the scope of your inquiry or not. But just generally——

Senator WEICKER. I think it is very much in the scope of the inquiry on the election campaign of 1972 and, I believe, if I am not mistaken, this covers the period after the 1968 election up until the 1972 election.

Mr. EHRLICHMAN. Well, in any event, the one principal investigation that I recall which Mr. Ulasewicz reported to me on, and I am sorry that I do not have—I do not think there were very many major ones of a political nature, my understanding of what he did had to do with Black Panthers and other violent group intelligence, and that is the other thing that stands out in my recollection. But Mr. Ulasewicz was sent to Edgartown to keep track of the development of the Chappaquiddick story and it slips my mind as to just what the date of that was

but I do recall his keeping us informed on a regular basis of developments as they became available there.

Senator WEICKER. And so you transmitted this information to the President?

Mr. EHRLICHMAN. In summary form. He produced almost nothing that was not a matter of newspaper reporting, as it turned out. So there was very little to, there was very little to pass on that would have been of any moment that you could not have read in an ordinary newspaper.

Senator WEICKER. Well, of course, Mr. Ulasewicz testified that part of the information which he received was a matter of public record, other information that he received was a matter of, was received or gotten in an investigatory way. But why did you feel the necessity to have somebody like Mr. Ulasewicz investigate the Black Panthers?

Mr. EHRLICHMAN. Oh——

Senator WEICKER. Is there some reason why possibly the law enforcement army, is this another area that J. Edgar Hoover was weak on?

Mr. EHRLICHMAN. No; he had his connections with the New York Police Department at one point in time, had been in intelligence involving violent groups of that kind, and he had sources, particularly in the New York Police Department Intelligence Division, and so he would be the recipient of information because of that former association.

Senator WEICKER. Well, I know, but that still is not a satisfactory answer. Was there some inadequacy on the part of normal——

Mr. EHRLICHMAN. I previously——

Senator WEICKER [continuing]. Normal law enforcement agencies?

Mr. EHRLICHMAN. Right. I previously testified, I think, Senator, we were not getting an accumulation of intelligence from the police and the sheriff's offices and the State police of various municipal and State organizations. It was some time—I think it was probably the second year or possibly into the third year before there was set up in the Justice Department a facility for accumulating all of this. Mr. Ulasewicz, in the sixth or seventh month that he worked in the counsel's office when I was counsel, did a kind of makeshift job of getting some of this information and feeding it in.

Senator WEICKER. So in fact during this period of time we all slept better at night knowing Mr. Ulasewicz was on the job, is that right?

Mr. EHRLICHMAN. Well, I don't know about that, Senator.

Senator WEICKER. I am going to pursue this for a minute because, let's get into the hiring of Mr. Ulasewicz. Was he brought down to the White House and interviewed for a job by the personnel at the White House? Just how was he hired?

Mr. EHRLICHMAN. No; he was hired because he was well known to Mr. Caulfield. Mr. Caulfield recommended him highly, and he was hired by me after a very brief meeting but principally on Mr. Caulfield's say-so and recommendation.

Senator WEICKER. Well, but where did you hire him?

Mr. EHRLICHMAN. Where did I hire him?

Senator WEICKER. Right.

Mr. EHRLICHMAN. Well, I met him in an airport while I was on a trip to New York, as I recall, and Mr. Caulfield, as I recall it, arranged a meeting for us. I hired him, I guess, in the White House, that is I made the decision and authorized Mr. Caulfield and made the arrangements with Mr. Kalmbach to pay him.

Senator WEICKER. In your first meeting with him, was it in the VIP lounge in LaGuardia Airport?

Mr. EHRLICHMAN. That was the only meeting with him I ever had.

Senator WEICKER. That was the only meeting?

Mr. EHRLICHMAN. Yes, sir.

Senator WEICKER. So that this is some new situation whereby we are going to meet potential White House employees in the lounges of airports or what?

Mr. EHRLICHMAN. As I tried to say in my opening statement he was not a White House employee.

Senator WEICKER. I see.

Mr. EHRLICHMAN. And he was never held out to be and as a matter of fact, the very point of having him was that we were not gathering political information with Government people. I didn't feel that we ought to have Government people in that business. That we ought to have a fellow who is established on the outside, who was paid on the outside, and you have this anomaly of having to conduct some political activity, both of a fundraising and of a staff and of an investigatory nature, and you do it with political funds, and they have to be outside people.

Senator WEICKER. Well, isn't it true, and certainly neither one of us is in the position of being a novice here politically, that the reason why you would want him on an outside payroll is that you would not want to claim him if he were found out. Would that be a fair description?

Mr. EHRLICHMAN. Well, I don't think the way it was set up there would be any way to disclaim him, Senator. Because he was being paid very directly from Nixon campaign funds in the hands of a trustee committee, and there just was no way to disclaim him. Everybody would be able to find out Mr. Ulasewicz' employer through just the employer number, if nothing else.

Senator WEICKER. Well, I will tell you maybe everybody found out. Maybe everybody knew but we had to do an awful lot of digging around here to find out who Mr. Ulasewicz was and what role he had to go ahead and play.

I would like to have your concept and I think this is very important; now we are questioning into the real events of the real business of this committee, what's your concept of political information. You see, unfortunately, thanks to the Committee To Re-Elect the President, and some of the witnesses who have appeared here, everybody thinks that the Senators at this table and others engaged in politics go running around hiring Ulasewicz' types to dig up dirt on each other, and I just can't allow that to fly without contesting it because really it's going to make elections rather interesting in the future if it does.

I wonder if you might, since you were the one who was responsible for hiring this man, and since we have had a description by this man of exactly what his job consisted of, which was dirt, I wonder if you might tell the committee what your concept is of politics here in the United States insofar as this type of activity is concerned?

MR. EHRLICHMAN. Well, I think that certainly there is room for improvement in the practice of politics in this country, there is no argument about that. But, at the same time, I think that each candidate who contests the candidacy of an incumbent has the obligation to come forward and contest the fitness of that incumbent for office both in terms of his voting record and in terms of his probity, and in terms of his morals, if you please, and any other facts that are important or germane to the voters of his district or State or the country, for that matter. I think a candidate for office assumes that burden of proof. He assumes the burden of proof of showing the unfitness of the incumbent and I don't think in our political system that is limited to his voting record or his absenteeism. If it were, we would countenance the perpetuation of scoundrels in office who were thieves or who were fraudulent or who were profligate or who were otherwise unfit for office, so I think it's perfectly competent for a challenger to meet head-on the issue of the fitness of an incumbent.

SENATOR WEICKER. Do you mean to tell me and this committee that you consider private investigators going into sexual habits, drinking habits, domestic problems, and personal social activities as a proper subject for investigation during the course of a political campaign?

MR. EHRLICHMAN. Senator, I know of my own knowledge of incumbents in office who are not discharging their obligation to their constituents because of their drinking habits, and it distresses me very much, and there is a kind of an unwritten law in the media that that is not discussed, and so the constituents at home have no way of knowing that you can go over here in the gallery and watch a Member totter onto the floor in a condition which, of at least partial inebriation which would preclude him from making any sort of a sober judgment on the issues that confront this country.

Now, I think that is important for the American people to know, and if the only way that it can be brought out is through his opponents in a political campaign, then I think that opponent has an affirmative obligation to bring that forward.

SENATOR WEICKER. Now, this is getting very interesting. [Laughter.]

Again we contrasted similar situations yesterday and again I am just not going to let these things get laid on the table without giving another side to the argument.

I have had eight election campaigns, 8 years, 6 against Democrats and 2 against Republicans, I suppose it would be considered self-serving to say that I have never done anything like that, so I won't. I will refer to my opponents. I know of no Democratic opponents out of the six and no Republican opponents out of the two that has ever done what Mr. Ulasewicz was doing or what you are, in effect advocating here.

Now it seems to me it is up to the constituency, whatever that constituency happens to be, to make a determination of the fitness of the man or woman that they go ahead and elect, but do you really want to bring the political system of the United States, of our campaigns down to the level of what you are talking about right now?

MR. EHRLICHMAN. Well, I conceive of it this way, Senator. I know that in your situation your life style is undoubtedly impeccable and there wouldn't be anything at issue like that.

SENATOR WEICKER. I'm no angel.

Mr. EHRLICHMAN. I thought you were.

Senator WEICKER. Believe me, I am not. I worry about you seeking people on the landscape here and I have a greater worry now before you here, and I will put it that way.

Mr. EHRLICHMAN. I think you will agree with me, Senator, that someone with a serious drinking habit is of doubtful fitness for the kind of heavy duty that you bear, for instance, or that any Senator bears in the Senate of the United States. That is certainly a material question that has to be raised in a political campaign, at least so it seems to me.

Now, if that is not something that the incumbent's opponent should bring out, then you are leaving the constituency to the tender mercy of the journalists in the community as to whether or not that is reported to the constituency because they don't have any way of knowing really, especially the constituencies remote from here where people get here very seldom to make an observation. So, I would be very concerned about that and it seems to me that would be a very legitimate subject of inquiry. Maybe my standards are all haywire and everybody in the Congress ought to be immune from scrutiny on that subject, but that just seems to me to be an indefensible position on your part.

Senator WEICKER. You think we have no scrutiny around here?

Mr. EHRLICHMAN. Sir?

Senator WEICKER. You think we have no scrutiny around here?

Mr. EHRLICHMAN. Well, in all candor—

Senator WEICKER. I mean I have got news, let's count them, they are all over here at this stage of the game and they are all the time not just to hear you and I talk. If there is anything that is quite obvious in Washington, D.C., it is that every aspect of our lives, legislatively, personally, and in every way, is subject to the scrutiny of a free press and subject to the scrutiny, at least the Congress is subject to the scrutiny of a free press. [Laughter.]

And also, subject to the scrutiny of our constituency.

Senator BAKER. Our wives.

Senator WEICKER. And our wives, right. [Laughter.]

I want to state right now, and I obviously you and I are at loggerheads on a very basic issue here and one that I think not only relates to Mr. Ulasewicz' activities, and I am not so sure we don't come right back to the break-in in Daniel Ellsberg's office again, that I am quite satisfied that our systems, our institutions, are perfectly capable of passing decent judgments, fair judgments, hard judgments, on political figures, public officials, without the covert operations of men like Mr. Ulasewicz.

Mr. EHRLICHMAN. Senator, I would only disagree with you by saying this much: I think that your assumptions with regard to the full reportage by the media of the personal conduct of people in public life gilds the lily unduly. Certainly you members of this committee are being subject to, subjected to scrutiny by the television and by the writing press to a degree and your conduct is being evaluated and measured in a way that seldom happens to a Member of the U.S. Senate or the Congress of the United States, and I think it is possible for some Members to exist under a, in a sheltered situation for years and years

and years here, and perpetuate themselves in office, so to speak, because you know and I know that the advantages are heavily in favor of the incumbent. You are in a position to favor reporters with stories and so on. It is an uphill struggle for someone to take on an incumbent U.S. Senator under any circumstances, and the press are not always as tough on others as they might be on the members of this committee in this setting.

So, I think you and I have a difference of opinion but I think that reasonable minds can differ on this subject particularly in the area of drinking, in the area of fitness of that kind to discharge the duties.

Now, certainly there are limits, and I would be the first to agree with you, that there are areas where, of subject matters that would be totally offensive to me as they would be to you, and I don't mean for a minute to contend for matters beyond those limits.

But I do think that that is one of the things that this whole proceeding is about, I think it's an attempt to try to define the lines within which an inquiry as to an incumbent, his life, his performance, his voting record, are subject to proper inquiry.

Senator WEICKER. I know, but if this is a matter of proper inquiry in the course of an election campaign, I mean why isn't it a proper, why isn't it proper inquiry as far as all Members of Congress are concerned insofar as the relationships between the executive branch and the legislative branch. Why not? Is this material, in other words, going to be used between the executive and legislative branches of the Government?

Mr. EHRLICHMAN. I don't think I understand.

Senator WEICKER. Well, you apparently consider it proper information to figure out to go ahead and win an election.

Is it proper information to dig out to go ahead and carry an issue?

Mr. EHRLICHMAN. You mean blackmail, no.

Senator WEICKER. I mean as between the executive and legislative branches of the Government.

Mr. EHRLICHMAN. In other words, you have a piece of information and you have a Congressman and you say Congressman——

Senator WEICKER. Yes.

Mr. EHRLICHMAN. No, it is not proper.

Senator WEICKER. In an election campaign?

Mr. EHRLICHMAN. I think it is proper to provide legitimate facts to an electorate that bear on the fitness of an incumbent.

Senator WEICKER. Of course, what you are saying and where we disagree and I want to make this clear, Mr. Chairman, if any other member of the committee wants to comment now I don't think anybody realizes what is being done here right now. You definitely have two different concepts of politics in this country meeting head on.

Mr. EHRLICHMAN. I might say, Senator——

Senator WEICKER. Let me finish and then I will be glad to go ahead and listen to you.

Mr. EHRLICHMAN. Pardon me, surely.

Senator WEICKER. I always thought we settled these matters on the basis of issues, on what you stood for, on a public stance that your opponents took that was a bad stance, how you can present yours, how you move around in a campaign, but to sit here at this moment in

time and tell me that we are going to settle our elections on the basis of sexual habits and drinking habits and domestic problems and personal and social activities.

Well, I tell you, you stick to your version and I am going to stick to mine.

Mr. EHRLICHMAN. Senator, I was going to say in what we have asked the FBI to do, to determine the fitness of an individual for appointment to the executive branch to the Cabinet, the sub-Cabinet, to the agency positions and so on, these kinds of questions of fitness, drinking habits, habitual intoxication, immorality, are all considered to be important questions to ask and to settle upon, and the review, as far as I know in the selection of people in this administration has been very rigorous and the standards have been very high.

Senator WEICKER. No. 1, please don't put the FBI in the same category as Mr. Ulasewicz. Now, I just don't think it is a fair comparison at all. I think these are two entirely different entities. I am proud of the Federal Bureau of Investigation.

Mr. EHRLICHMAN. The subjects are the same, Senator.

Senator WEICKER. I might add you keep on talking about the enormous advantages an incumbent enjoys. May I point out according to your theory the President was the incumbent. He was the incumbent.

Mr. EHRLICHMAN. Please don't misunderstand me, I think an incumbent President has an enormous advantage.

Senator WEICKER. Yes, but this one not only had an enormous advantage but apparently you went around and had this type of information handed to him which added to the advantage that he had. I would say made him rather unbeatable.

Well, in any event let's leave that subject for the time being, although I find it unbelievable.

Yesterday, in response to a series of questions concerning the need for the Plumbers you stated as follows:

And I assure you that the decision that was made in this matter to put investigators in the field was taken most reluctantly and for genuine purposes and the purposes are simply to supplement what was considered to be an inadequate effort at the time by the Federal Bureau of Investigation.

Now, in order to satisfy yourself on this you ought to hear from Mr. Mitchell.

That was your response, you will find that incidentally, counselor, if you have the transcript, on page 5535 of yesterday's testimony.

Now, in order for you to satisfy yourself on this you ought to hear from Mr. Mitchell.

We have already heard from Mr. Mitchell and he testified before this committee that the first that he had heard of the White House horrors, the Plumbers operation, was on June 21, 1972. This was after he left as Attorney General. Is Mr. Mitchell lying?

Mr. EHRLICHMAN. As I said in my testimony the other day, Senator, Mr. Mitchell's recollection here is evidently hazy because the President authorized the creation of this unit on July 24, and asked that we meet with several members of the Cabinet.

Senator WEICKER. July 24, 1971?

Mr. EHRLICHMAN. Yes, sir. To meet with several members of the Cabinet whose departments would be the subject of the special unit's stimulation, so to speak, to get them to perform better in this area of

leaks. On July 28 we had that meeting with Mr. Mitchell, at which Mr. Young, Mr. Krogh, and I briefed Mr. Mitchell on the President's desires, on the purpose of the special unit and what it would be doing.

Senator WEICKER. On what date was this?

Mr. EHRLICHMAN. July 28.

Senator WEICKER. 1971?

Mr. EHRLICHMAN. Yes, sir.

Senator WEICKER. So, when Mr. Mitchell said that the first he learned of the White House horrors was on June 21, there has been some debate it might be June 20, 1972, that was inaccurate, is that right?

Mr. EHRLICHMAN. Yes, sir.

Senator WEICKER. Well, that answers that.

Now, I am going to follow through some dates and times with you. Mr. Ehrlichman. On June 20 or 21, 1972, Mr. Mitchell, according to his testimony, learned for the first time, which you have just indicated was not true but I will follow through, according to his testimony, learned for the first time of the Ellsberg break-in and other activities of the Plumbers, which he called the White House horrors, and Mr. Mitchell was shocked by these revelations and feared the disclosure of these events might cost the President the election. That is what he testified to in front of this committee.

Now, the next day, June 22, 1972, at your office—I beg your pardon, the next day Mr. Mitchell met with you at your office at 11:45 a.m. Do you have that on your log?

Mr. EHRLICHMAN. Yes, sir.

Senator WEICKER. Which meeting followed a group meeting he had attended with you at 9 o'clock.

Mr. EHRLICHMAN. That is right.

Senator WEICKER. And which meeting followed a phone call between you and Mr. Mitchell at 11:20 a.m. That is on Mr. Mitchell's, according to Mr. Mitchell's logs. Phone call, in other words, he met with you at 9 a.m. or it was at a group meeting with you at 9 o'clock on the 22d in the morning, Mr. Mitchell's logs show he had a phone conversation with you at 11:20 on June 22, and then at 11:45, he meets with you.

Now, what did you and Mr. Mitchell discuss at your 11:45 a.m. meeting that you could not discuss either at 9 o'clock when you met with the group or at 11:20 a.m. on the phone?

Mr. EHRLICHMAN. I do not know, Senator. Does his log show whether he originated that phone call or I did, because I cannot reconstruct that meeting. I just do not know what that meeting was about.

Senator WEICKER. You mean the 11:45 a.m. meeting?

Mr. EHRLICHMAN. Yes, sir.

Senator WEICKER. No; I do not know.

Mr. EHRLICHMAN. It would depend, and it would help me to reconstruct to know whether I had placed it, in which case probably the President had asked me to refer something to him or whether he had placed it but, I just draw a blank on it, I am sorry to say.

Senator WEICKER. Do you think there is any possibility, considering the fact that Mr. Mitchell had received the report from Messrs.

LaRue and Mardian, either the day before or 2 days before, depending on which version you want, that he specifically discussed with you this problem, this problem of the break-in, the White House horrors, and his fear as to what it would do in the election?

Mr. EHRLICHMAN. I would suggest that it had not happened that way, for this reason. I suspect that this meeting was convened for the reason contained in the phone call, whatever that was, and I am sorry to say I do not know what it was, but had it been something that was in his mind in the morning when we all got together at 9:30 or 10 he most likely would have stayed back, as sometimes happened with some of those people in the meeting. From time to time Clark MacGregor, for instance, would stay back after everybody else left and he would talk about something that he had on his mind. I am really surmising there. I just do not know. I can tell you this, that at no time did Mr. Mitchell express to me his concerns which he described here to the committee about the so-called horrors.

Senator WEICKER. At no time?

Mr. EHRLICHMAN. I do not recall his ever doing so.

Senator WEICKER. All right.

On the same day, according to Mr. Gray's statement to this committee, in General Walters' memo of June 28, 1972, Mr. Gray routinely inquired into the possible CIA involvement in the Watergate case and was told by Director Helms that there was no involvement.

The next day, on June 23, you and Mr. Haldeman called Mr. Helms and General Walters to a meeting in your office, which meeting General Walters characterized as follows. And I think it important to read this memorandum. This is General Walters' June 28, 1972:

Memorandum for the record:

On June 23 at 1300 on request I called with Director Helms on John Ehrlichman and Robert Haldeman in Ehrlichman's office in the White House.

Haldeman said that the "bugging" affair at the Democratic National Committee headquarters at the Watergate apartments had made a lot of noise and the Democrats were trying to maximize it. The FBI had been called in and was investigating the matter. The investigation was leading to a lot of important people and this could get worse. He asked what the connection with the Agency and the Director repeated that there was none. Haldeman said that the whole affair was getting embarrassing and it was the President's wish that Walters call on Acting FBI Director Patrick Gray and suggest to him that since the five suspects had been arrested that this should be sufficient and that it was not advantageous to have the inquiry pushed, especially in Mexico, et cetera.

May I stop here for one second? The reason for my reading this memorandum is that obviously, there are four participants in this meeting and I want each one to have a chance to go ahead and comment on it, even though all of it does not apply to you there, you are one of the participants at this meeting.

Director Helms said that he had talked to Gray on the previous day and had made plain to him that the Agency was not behind this matter, that it was not connected with it and none of the suspects was working for, nor had worked for the Agency in the last 2 years. He had told Gray that none of his investigations was touching any covert projects of the Agency, current or ongoing.

Haldeman then stated that I could tell Gray that I had talked to the White House and suggest that the investigation not be pushed further. Gray would be receptive as he was looking for guidance in the matter.

The Director repeated that the Agency was unconnected with the matter. I then agreed to talk to Gray as directed. Ehrlichman implied—

It looks like "I should"—I don't want to say anything incorrect there.

I should do this soon—

I will get a clean copy—

and I said I would try to do it today.

Upon leaving the White House I discussed the matter briefly with the Director. On returning to the office I called Gray, indicated that this was a matter of some urgency, and he agreed to see me at 1430 that day.

Now that was General Walters.

Mr. Helms stated to this committee during an interview as follows:

A few minutes later Haldeman and Ehrlichman walked in and Haldeman in no uncertain terms instructed Walters to see Pat Gray of the FBI and instruct him not to pursue his investigation in Mexico concerning Gerry M. Dalhberg since it might involve the CIA. Helms had no idea what they were talking about with respect to Mexico and when he asked he was told, "Never mind what it's all about." But they wanted Walters to go to Pat Gray right then and there.

End of quote in the interview with Mr. Helms.

Now, isn't it a fact that the meeting with Director Helms and General Walters on June 23 was an effort to hinder the investigation?

Mr. EHRLICHMAN. Senator, that meeting was convened at the President's request. I learned later that the President was operating on the basis of an independent source of investigation and out of a concern that an all-out FBI investigation might compromise some CIA activity.

My recollection of that meeting is at considerable variance with General Walters in the general thrust and in the details. In point of fact, as I recall it we informed Mr. Helms and General Walters that the meeting was being held at the President's request for the reasons I stated.

Mr. Haldeman said that the Watergate was an obvious important political issue and that the President had no alternative but to order a full all-out FBI investigation until he was satisfied that there was some specific area from which the FBI should not probe for fear of leaks through the FBI of disassociated and disconnected CIA activities that had no bearing on Watergate. As I recall there were a couple of basic questions that were asked of these gentlemen. One was whether the CIA was directly involved in the break-in itself and they said it was not.

The other was whether or not there was any disassociated CIA activity, past or present, which might be disclosed through a vigorous FBI investigation. They did not make the same kind of a categorical response to that question as they had made to the other. As a matter of fact, my recollection is that a response to the effect that they don't keep track, that is the Director and the Deputy Director, of these regional activities, such as the one in Mexico, they would want to check with the regional man.

Now you have in your—

Senator WEICKER. They had done that?

Mr. EHRLICHMAN. Sir?

Senator WEICKER. They had done that?

Mr. EHRLICHMAN. I think their letter of July 6 to the Acting Director of the FBI shows that they had not done that and they did not do

that and they did not assure the FBI until June 27 as to the Mexican situation. Then they confirmed that oral assurance of June 27 in writing on July 6 and on July 6 is when Director Gray called the President and said "I now have a memo from the CIA assuring me that there is no problem," and the President said "Let's go all out." So that is the sequence of events.

Senator WEICKER. Why did the Director call the President?

Mr. EHRLICHMAN. Because he received—I assume because he had this memorandum.

Senator WEICKER. Oh no, oh no. Why did the Director call the President?

Mr. EHRLICHMAN. In point of fact I think the President called the Director.

Senator WEICKER. That is correct. The Director had called Mr. MacGregor.

Mr. EHRLICHMAN. That is true.

Senator WEICKER. And he had expressed to Mr. MacGregor doubts as to this situation. He felt this was the best way to go ahead and get in touch with the President, and the President called him back shortly thereafter.

Mr. EHRLICHMAN. I wasn't at the meeting between Mr. Gray and Mr. MacGregor so I don't know what they said but, I do know what the President told me.

Senator WEICKER. But you do know—

Mr. EHRLICHMAN. That Mr. MacGregor told him when he came and called on the President on July 6 that he had been talking to Pat Gray and Pat Gray felt it was important that he talk to the President right away and the President picked up the phone immediately and called him.

Senator WEICKER. And did Pat Gray tell the President that there were forces of those around him who were trying to wound him?

Mr. EHRLICHMAN. I had never heard that.

Senator WEICKER. Is it not a fact that General Walters and Pat Gray both felt it was necessary to call the President on this matter, that both of them had the same apprehensions that the investigation was being interfered with?

Mr. EHRLICHMAN. I think it was important for Pat Gray to have talked with the President, too. I heartily concurred with that. I hope you understand that when Mr. Haldeman and I met with the CIA, it was for the purpose only of conveying to those gentlemen the President's concern and the meeting did not culminate in any instructions to anyone except a request to General Walters that he sit down and talk to Pat Gray about this matter, and reassure Pat Gray, if he could be factually reassured.

Now, that, in fact is what happened, and Mr. Haldeman and I disconnected from this after that one 20-minute meeting.

Senator WEICKER. All right, let's drop back in time again here to the meeting on June 23. You are sitting here with the Director of the CIA and with General Walters. Would it not be logical to address any request of the CIA to the Director of the CIA?

Mr. EHRLICHMAN. Not if you were told by the President that he wanted to work through General Walters.

Senator WEICKER. Let me repeat Mr. Helms' testimony or his interview rather, his interview with this committee. Helms had no idea what they were talking about with respect to Mexico and when he asked he was told: "Never mind what it's all about" but they wanted Walters to go to Pat Gray right then and there?

Mr. EHRLICHMAN. The President's instructions were not to me, they were to Mr. Haldeman and he is going to be your best witness as to those instructions but my understanding of those instructions second-hand is that the President said that he wanted General Walters and Pat Gray to work this out between them. And that was confirmed to me by the President at a later time but I didn't know it at the time of this meeting.

Senator WEICKER. And then we also have General Walters' memorandum which I have read to you in which he indicates concern over the Watergate investigation in a political sense and you disagreed with that?

Mr. EHRLICHMAN. I am—the memorandum that you read to me was dated the 28th of—

Senator WEICKER. Have you got that memorandum?

Mr. EHRLICHMAN. June 28 which was considerably—

Senator WEICKER. Five days afterward?

Mr. EHRLICHMAN. Yes; and, as a matter of fact after the CIA finally determined that it had no involvement or exposure on the 27th and orally informed the Bureau to that effect. It was then and only then that General Walters sat down and reconstructed these meetings.

Senator WEICKER. So, in effect, your testimony stands in conflict with the versions of that meeting told by, as I have read them to you, of both General Walters and Director Helms?

Mr. EHRLICHMAN. Yes, sir.

Senator WEICKER. One last series of questions, Mr. Chairman, and then I will move along here. I would like to, if we could, get to the taped telephone conversations, the conversations which you taped.

Do you have both those before you?

Mr. EHRLICHMAN. Which are those, Senator?

Senator WEICKER. These would be to—I find it strange in the United States to say which are those as if this was normal practice. These are the conversations with Pat Gray on March 7 or 8, and the following conversation with John Dean, whatever that happens to be.

I wonder if at this time we might not, Mr. Chairman, have these entered as exhibits.

Senator ERVIN. What do you want entered as exhibits? I didn't quite get what you wanted entered as exhibits.

Senator WEICKER. The two, the transcriptions of the two taped telephone conversations, the first between Mr. Ehrlichman and Pat Gray, the second one between Mr. Ehrlichman and John Dean.

Senator ERVIN. Did Mr. Ehrlichman identify the one that he was a party to?

Senator WEICKER. He was a party to both, Mr. Chairman.

Senator ERVIN. The two papers will be marked as exhibits and admitted as such. I am sorry, I thought maybe you were referring to the General Walters matter, the memorandum which you read previously. We will also enter that with the appropriate exhibit number.

[The documents referred to were marked exhibits Nos. 101, 102, and 103.*]

Mr. WILSON. Is there a pending question, Mr. Chairman?

Senator WEICKER. I want to be sure Mr. Ehrlichman has a chance to look over the material.

Mr. EHRLICHMAN. That is fine.

Senator WEICKER. All right, let's get first to the conversation between yourself and Pat Gray. The first portion of it, let me try to synopsise that, Gray makes some preliminary—unless you want the whole thing read. If you want the whole thing read we can do that. Would that be better to handle it that way so there won't be any unfair—

Mr. EHRLICHMAN. Why don't you just ask whatever you have on your mind, Senator, and see if I can answer.

Senator WEICKER. Well, Gray, Pat Gray made some preliminary remarks concerning the position at the judiciary, these are phone conversations of March 7 or 8, 1973, when Pat Gray is before the Judiciary Committee. Subject of his confirmation, Gray made some preliminary remarks concerning his position, that the Judiciary Committee could only question his procedural conduct of the investigation, not the substance since the Ervin committee would do that. He also pointed out the very same day that ACLU submitted a letter to the committee stating the same position.

Gray then went on to say, and then I am going into the exact quote, and this is Gray to Ehrlichman:

Another thing I want to talk to you about is that I'm being pushed awfully hard in certain areas and I'm not giving an inch and you know those areas and I think you've got to tell John Wesley to stand awful tight in the saddle and be very careful about what he says and to be absolutely certain that he knows in his own mind that he delivered everything he had to the FBI and don't make any distinction between—

And then something goes on that is inaudible—

but that he delivered everything he had to the FBI.

Now what did you assume this to mean, what is he talking about here when he says, "And you know those areas I think you have got to tell John Wesley"?

Mr. EHRLICHMAN. I assume he was talking about his method of the delivery of the contents of Hunt's safe, the fact that some went to the Washington field office and some went to the Director directly.

Senator WEICKER:

EHRLICHMAN. Right.

GRAY. And that he delivered it to those agents * * * this is absolutely imperative.

EHRLICHMAN. All right.

GRAY. You know I've got a couple of areas up there that I'm hitting hard and I'm just taking them on the attack.

EHRLICHMAN. OK.

GRAY. I wanted you to know that.

EHRLICHMAN. Good. Keep up the good work, my boy. Let me know if I can help.

GRAY. All right. He can help by doing that.

EHRLICHMAN. Good, I'll do it.

You then immediately called Mr. Dean; is that correct?

Mr. EHRLICHMAN. Yes, sir.

*See pp. 2948-2952.

Senator WEICKER. I would like to go ahead and read, if we could, this conversation.

DEAN. Hello.

EHRlichMAN. Hi. Just had a call from your favorite witness.

DEAN. Which is?

EHRlichMAN. Patrick J. Gray.

DEAN. Oh, really?

EHRlichMAN. And he says to make sure that old John W. Dean stays very, very firm and steady on his story that he delivered every document to the FBI and that he doesn't start making nice distinctions between agents and directors.

DEAN. He's a little worried, is he?

EHRlichMAN. Well, he just doesn't want there to be any question. He says he's hanging very firm and tough and there's a lot of probing around.

DEAN. Yeah, he's really hanging tough. You ought to read the transcript. It just makes me gag.

EHRlichMAN. Really?

DEAN. Oh, it's awful, John.

EHRlichMAN. Why did he call me? To cover his tracks?

DEAN. Yeah, sure. I laid this on him yesterday.

EHRlichMAN. Oh, I see. OK.

DEAN. I laid it on him to, you know to fuse the issue so I don't have any idea what he said up there today.

EHRlichMAN. I see. It was a funny phone call. Said he was going in to object to the jurisdiction of the group to get into the substance and that their only jurisdiction was to—

again inaudible there—

was procedural efforts and his competence and he says the ACLU put a letter in to the same effect.

DEAN. Yeah. Wally picked up an interesting one on the grapevine today that planned strategy now is to proceed in this one as they did in the Kleindienst.

EHRlichMAN. Down to the point of calling you?

DEAN. Down to the point of calling me and—

EHRlichMAN. Let him hang there?

Well, I think we ought to let him hang there. Let him twist slowly, slowly in the wind.

DEAN. That's right. I was in with the boss this morning and that's exactly where he was coming out. He said I'm not sure that Gray is smart enough to run the Bureau the way he's handling himself.

EHRlichMAN. Well, OK, you're on top of it. Good.

Now, Mr. Ehrlichman, that portion of the transcript, "Yes, sure, I laid this on him yesterday," and you said "Oh, I see, OK." What is being referred to there?

Mr. EHRlichMAN. I do not know. I do not know and never did know. I do not know what Mr. Dean had talked to him the previous day about. I was looking as you were reading, to see if I could see what had been transpiring in that particular week in those hearings, and it seems to me that the issue was primarily—

Senator WEICKER. Dean sat in on the interviews that the FBI conducted during the Watergate investigation and the question of whether Dean would come to the Judiciary Committee and testify.

Mr. EHRlichMAN. I think that this was one of a series of telephone calls that Mr. Gray made to me and Mr. Dean at the close of his testifying every day to give us his view of how things had gone for the day, sometimes rather optimistic, but in direct response to your question. I do not know to what that does refer, that is to say, what Mr. Dean talked to him about the previous day.

Senator WEICKER. In other words, that would then go into the same area of "I laid it on him, too, you know, to fuse the issue." Again your

response would be similar there—you do not understand what he was talking about?

Mr. EHRLICHMAN. Well, that is correct; unless it refers back to this question of who the documents were delivered to. If it refers to some other subject, I do not know.

Senator WEICKER. Let me ask you a question. Yesterday you testified to two separate events. One was April 15 where Mr. Petersen and Attorney General Kleindienst informed the President, and I think you said yourself also, of the fact that the record, the Hunt records, had been burned by Pat Gray and that precipitated the phone conversation.

Mr. EHRLICHMAN. No, sir. They had a conversation——

Senator WEICKER. If I can finish that, that precipitates the phone conversation to Gray in the evening?

Mr. EHRLICHMAN. No. At the time of that telephone call in the evening, neither the President nor I knew or had any reason to believe that Mr. Gray had destroyed the documents.

Senator WEICKER. Well, I think it might be—let me get back to that question, I will get back to that question in just a minute.

You also—let me drop back in time—at the beginning of April, you went out and you had a talk with Judge Byrne relative to the FBI directorship. Now, it is clear from this taped telephone conversation that you do not think very much of Mr. Gray unless for some reason or another swinging around in the breeze is a new term of endearment that I do not know anything about, and obviously, from what John Dean says, the President does not think very much of Pat Gray. He says that “I am not sure Gray is smart enough to run the Bureau the way he is handling himself,” and obviously, Dean, Dean says, “He makes me gag.” So John Dean does not think very much of Pat Gray. What in heavens’ name is Pat Gray doing up there at these confirmation hearings as the nominee of the administration?

Mr. EHRLICHMAN. Well, Senator, I think you will remember those confirmation hearings and the revelations of the manner in which Mr. Gray responded during the hearings, and I think it is fair to say that there was pretty general disenchantment in the manner in which he handled himself during that time. What I was looking at while you were reading was the various events that took place starting back around the first of the month in those hearings, and climaxing on the 23d of March with Mr. Gray saying that John Dean probably lied to the FBI, and then later privately recanting that charge to Mr. Dean and admitting that it was an overstatement, and so on. At this point in time there was general disenchantment of Mr. Gray’s conduct in the process of confirmation, there is not any question about it.

Senator WEICKER. But, do you mean to tell me if there is this degree of disenchantment that you are going to keep this man on as the nominee and then later on as Acting Director, in fact, until April 27, when, in fact, it is Pat Gray that steps down, is that correct? There must be some reason, there must be some reason.

Mr. EHRLICHMAN. Well, I think the situation was evaluated as being perhaps doubtful and painful as it existed but perhaps more painful to withdraw the problem, and so there was a weighing of the alternative evils, and it was felt on balance that at some time along in there

and I have forgotten along where it was but it must have been about this time that that nomination was essentially doomed, that it was not going anywhere in the committee and that we had to set about finding some alternative, and somewhere along in this period of time the President begins active consideration of an alternative list.

Senator WEICKER. But March 7 or 8, obviously, from the language that everybody uses here, and you say nomination is doomed, and yet nothing happens until April 27, and only then because at least a good portion of the Pat Gray story was made public on the 26th, 27th.

Mr. EHRLICHMAN. Well, Senator, the die was cast long before that, and the, as I explained to you yesterday, I believe, the only reason that the President forebore to remove Mr. Gray prior to that date was in cooperation with the Attorney General and the Assistant Attorney General, who had asked him to permit them an opportunity to complete their work.

Senator WEICKER. Having gotten to April 15, on April 15 apparently matters came to your attention which involve specifically Mr. Gray admitting that he destroyed the documents, so we can now add 10 more days onto the time when Pat Gray is kept in place. Do you think there is any possibility of the fact that either Pat Gray was kept in place so that there was an Acting Director of the FBI under the control of you and Mr. Haldeman or that Pat Gray was kept in place so that he could be part of the Monday night TV spectacular when you and Haldeman and Kleindienst and Dean were let go? Do you think that any of those might have been reasons for holding him in place?

Mr. EHRLICHMAN. I am sure it was neither of those, Senator, because in point of fact as you say, the President was fully advised of the facts on the 15th. As soon as he decided to move he immediately replaced Mr. Gray with Mr. Ruckelshaus, who was one of the names that had been on this alternative list for some time, so that it was not a situation—I cannot think of any particular advantage to anyone in that delay except to the investigators. And that is to say, Mr. Petersen and the Attorney General, who felt that they had to make their case.

Senator WEICKER. On March 7 or 8, in discussing Pat Gray, Dean says "He makes me gag," you have got him hanging, and the President says, "He is not smart enough to run the Bureau."

Now, this is an evaluation made of the Director of the, or the nominee for the directorship of the Federal Bureau of Investigation. This is the man who is supposed to serve us all, and these evaluations are made on the 7th or 8th of March, and nothing happens. And then, on the 15th of April the man even turns to you and says he burned the files, he admits it and he is still held in place and you are telling me that basically all that was involved here was someone wanted an investigation after April 15. What would be the reason for holding him in place between March 7 and April 15?

Mr. EHRLICHMAN. Well, the decision was made to let the confirmation process run, and that ran until, let us see, the first part of April, as I recall, April 6.

Senator WEICKER. Did the President ask for his resignation?

Mr. EHRLICHMAN. I think not. I believe that Mr. Gray submitted his resignation and informed the President.

Senator WEICKER. If the information about Mr. Gray had not been made public do you think he still would have submitted his resignation on April 27?

Mr. EHRLICHMAN. Well, I have no idea as to the state of the investigation at that point. The President was working directly with the Attorney General on that and with Mr. Petersen, and I think they were calling the tune pretty well as to the timing.

Senator WEICKER. Do you think the President would have asked for his resignation by the 30th?

Mr. EHRLICHMAN. I do not know, Senator, I haven't any idea.

Senator WEICKER. I have no further questions, Mr. Chairman.

Senator ERVIN. When was it that you phoned Henry Petersen, Assistant Attorney General in charge of the Criminal Division of the Justice Department and having general supervision of the prosecution, and conveyed to him the President's request that Maurice Stans not be compelled to go before the grand jury?

Mr. EHRLICHMAN. I am not sure, Mr. Chairman. I could search this log and see if I could find it.

Senator ERVIN. Well, it was some time considerably before September, was it not?

Mr. EHRLICHMAN. I would assume so.

Senator ERVIN. Yes.

Mr. EHRLICHMAN. I believe I have that date in my log but I cannot recall it offhand. I will find it for you overnight if you would like me to.

Senator ERVIN. It was before the bills of indictment were returned by the grand jury in September 1972.

Mr. EHRLICHMAN. It was during the original grand jury process.

Senator ERVIN. Now, you stated yesterday that some other witnesses were not required to go before the grand jury.

Mr. EHRLICHMAN. That is my understanding.

Senator ERVIN. But you did not make any phone calls about them.

Mr. EHRLICHMAN. No, sir.

Senator ERVIN. I am bound to say just by way of observation that your testimony is that Maurice Stans was excused from going before the grand jury pursuant to the request made by the President. Under our system of criminal jurisdiction, witnesses are supposed to go before the grand jury so that the grand jury may ask them questions even though they may be questions that the prosecuting attorneys do not see fit to ask.

The testimony of Maurice Stans was taken in the Department of Justice in the absence of the grand jury and in the presence of the prosecuting attorneys. What their testimony was the committee doesn't know and has no way of getting access to it.

Maurice Stans was the director of the Finance Committee To Re-Elect the President, and one can reasonably assume that he knew more about the finances involved than any other human being or should have known more about it.

I don't know whether it was a 16-man or 23-man grand jury, but if he had gone before the grand jury, any one of those grand jurors who had an inquisitive mind could have ascertained by questioning Maurice Stans what Maurice Stans testified before this committee.

At that time they were investigating the break-in of the Watergate, and it was known that five burglars had been caught in the Watergate redhanded in an act of burglary in the headquarters of the Democratic National Committee. It was known that one of them, McCord, was the security officer of the Committee To Re-Elect the President. It was known that the other four burglars had in their possession at the time they were caught, campaign funds belonging to the Nixon campaign.

A few days later George Gordon Liddy, the chief counsel of the Finance Committee To Re-Elect the President, of which Stans was director, and E. Howard Hunt, who was on the White House payroll, and who had an office in the White House, and who had been associated in the Ellsberg matter with Liddy, were arrested and charged, in effect, with masterminding the burglary.

Maurice Stans testified that instead of depositing such moneys in the bank which would have made a documentary record of their receipts and disbursements possible, he had \$1,700,000 kept in two safes in cash in the office of his committee.

He testified that over \$1 million of this money was disbursed in cash. He testified that his treasurer, Hugh W. Sloan, Jr., came to him and told him that he had grave misgivings about disbursing thousands of dollars in cash to Liddy on the orders of Jeb Magruder, the deputy director of the Committee To Re-Elect the President, of which John Mitchell, former Attorney General, was the director.

He testified pursuant to the misgivings expressed to him by Sloan, he held a consultation with Mitchell. He testified that after he held this consultation with Mitchell he had a consultation with Sloan, and he told Sloan that Mitchell said that he should go ahead and continue these disbursements which Sloan said ultimately ran to \$199,000 in cash to Liddy. He also stated that when Sloan sort of reiterated his misgivings, that he, Stans, said to Sloan, "I don't know what this money is being used for—I don't want to know what this money is being used for and you don't want to know either."

Now, I am not saying anything about what the President's intention was. The President ought to never have made a request which had the effect of bypassing the judicial process by which witnesses in investigations go before grand juries on the subject being questioned by grand juries.

But, as a result of the President's request, which you communicated to Petersen, and which Petersen and the prosecuting attorneys complied with, which they ought never to have done, the grand jury which was trying to find whether any persons ought to be indicted and whether any persons had procured the other. The seven defendants, to break into the Watergate, were implicated. If Stans had given his testimony before the grand jury that he gave to this committee, it would have indicated that the evidential tracks led directly from the Watergate burglary into the office and to some of the high officials in charge of the Committee To Re-Elect the President, and the Finance Committee To Re-Elect the President. And as a result of the prosecuting attorneys giving Mr. Stans a privilege that no citizen of the United States was entitled to have at the request of the President, the grand jury was deprived of the benefit of this testimony.

Mr. EHRLICHMAN. Mr. Chairman——

Senator ERVIN. And only the seven people originally arrested were indicted.

Mr. EHRLICHMAN. Mr. Chairman——

Senator ERVIN. Yes.

Mr. EHRLICHMAN. Lest the viewers be left with the impression that the grand jury did not see the deposition, I think it is important to note that the grand jury did, in fact, have that deposition read to them and included the questions of the prosecutors and Mr. Stans' responses, as I understand it, and then, of course, the grand jury had the opportunity to indicate to the prosecutors any additional questions that they might wish to have asked of Mr. Stans or in point of fact, as counsel advises me, they could have asked that Mr. Stans then be brought to the grand jury.

Senator ERVIN. But you do not know what was in the deposition, do you?

Mr. EHRLICHMAN. Sir?

Senator ERVIN. You do not know what was in the deposition?

Mr. EHRLICHMAN. No.

Senator ERVIN. And you were not in the grand jury room?

Mr. EHRLICHMAN. I think you are leaving the impression, Mr. Chairman, that the deposition was somehow or another kept away from the grand jury.

Senator ERVIN. Yes, but depositions have been kept away from this committee and I know from trying to extract testimony from Mr. Stans, that you had to pull testimony out of him, that you had to get a question as strong as two team oxen.

Mr. EHRLICHMAN. Are you suggesting that his testimony before the grand jury would have been available before this committee, Mr. Chairman?

Senator ERVIN. No, I am not. That is exactly what I am talking about. But the grand jury would have heard him, would have seen Mr. Stans in person, and the grand jury could have asked him the questions if they weren't satisfied with what the attorneys were asking, and instead of letting him go and be seen and heard by the grand jury, they treat him like no American citizen was entitled to be treated. They took his testimony secretly, with nobody present except perhaps the reporter and the prosecuting attorneys, and this committee can't find out what Stans said before the grand jury, and you don't know, and I don't know but this is the kind of a situation that makes people grieve over justice being so treated, even at the request of the President of the United States.

Senator BAKER. Mr. Chairman, I have no quarrel with your major thesis that it's an extraordinary and unusual situation for one to give testimony for grand jury purposes by deposition instead of personally. But I would make only one collateral point, and this is not said in defense of anyone, it's simply an observation. Had Mr. Stans testified before the grand jury in person, this committee would not have had that testimony either. The important thing, the point that you make, and with which I fully agree, is that the grand jury system did not function in the prescribed way. The grand jury did not have face-to-face confrontation. It was unique and it was different. But for fear

the image may be left that we were as a committee deprived of that testimony, a grand jury's deliberations are and they ought to be inviolate, and they would not have been available to this committee in any event.

Senator ERVIN. My point is this: That if the grand jury had had the testimony which Mr. Stans gave here in person, they might well have concluded that there was a prima facie case that officials of the Committee To Re-Elect the President had hired these seven men to burglarize the Watergate and by reason thereof they might have indicted them for being accessories before the fact to a murder, but they didn't have the benefit of the testimony of Mr. Stans' evidence in person.

Senator BAKER. Did the chairman say murder? I think you meant burglary.

Senator ERVIN. No—burglary, burglary.

Senator BAKER. There is a new surprise every day, but I was not prepared for that one.

Mr. WILSON. May I answer that?

Senator ERVIN. No, sir, I don't think so—you are not defending anybody except Mr. Ehrlichman and you are not a witness, Mr. Wilson.

Mr. WILSON. This would be defending Mr. Ehrlichman against that remark.

Senator ERVIN. Well, you are not a witness, Mr. Wilson.

Mr. WILSON. But you say I am here defending Mr. Ehrlichman.

Senator ERVIN. Yes, sir; you are here to defend Mr. Ehrlichman.

Mr. WILSON. I can make a pertinent answer to what you just said. May I make it?

Senator ERVIN. Our rules don't entitle you to, but if you can explain why Mr. Stans ought to be treated in a different way from any other citizen in the United States when there is no law that allows it, I will be glad to hear your explanation.

Mr. WILSON. How do you know that Mr. Stans' deposition that went to the grand jury is any different from his testimony before this committee?

Senator ERVIN. I don't know because there is no way to tell it but I know if he had testified before the grand jury and given the same evidence he gave before this committee, the grand jury would have had a reasonable basis for reaching a conclusion that there was a prima facie case and that is all the grand jury has got to find that officers of the Committee To Re-Elect the President had procured this burglary and they could have presented them for indictment as accessories before the fact to burglary, because the evidence is that the money came right out of the Committee To Re-Elect the President, right to these people.

The committee will stand in recess until 10 o'clock Monday.

[Whereupon, at 4:55 p.m., the committee recessed, to reconvene at 10 a.m., Monday, July 30, 1973.]

MONDAY, JULY 30, 1973

U.S. SENATE,
SELECT COMMITTEE ON
PRESIDENTIAL CAMPAIGN ACTIVITIES,
Washington, D.C.

The Select Committee met, pursuant to recess, at 10:05 a.m., in room 318, Russell Senate Office Building, Senator Sam J. Ervin, Jr. (chairman), presiding.

Present: Senators Ervin, Talmadge, Inouye, Montoya, Baker, Gurney, and Weicker.

Also present: Samuel Dash, chief counsel and staff director; Fred D. Thompson, minority counsel; Rufus L. Edmisten, deputy chief counsel; Arthur S. Miller, chief consultant; Jed Johnson, consultant; David M. Dorsen, James Hamilton, and Terry F. Lenzner, assistant chief counsels; R. Phillip Haire, Marc Lackritz, William T. Mayton, Ronald D. Rotunda, and Barry Schochet, assistant majority counsels; Eugene Boyce, hearings record counsel; Donald G. Sanders, deputy minority counsel; Howard S. Liebengood, H. William Shure, and Robert Silverstein, assistant minority counsels; Pauline O. Dement, research assistant; Eiler Ravnholt, office of Senator Inouye; Robert Baca, office of Senator Montoya; Ron McMahan, assistant to Senator Baker; A. Searle Field, assistant to Senator Weicker; Michael Flanagan, assistant publications clerk.

Senator ERVIN. I have on a number of occasions requested the audience to refrain from any action which indicates approval or disapproval of anybody or of any question or any answer, and I am going to have to with much reluctance. It does not assist the committee for people to demonstrate, and I am going to have to instruct the officers to eject from the hearing room anybody who engages in any demonstration in the future.

During the examination of Secretary Stans he was asked certain questions with reference to the existence of a fund in the Department of Commerce while he was Secretary. He denied the existence of such a fund, and I have received a letter dated July 27, 1973, from his attorneys:

This letter is another appeal to your Committee to act in a spirit of fairness which requires the clearing up of the misleading record made during the appearance of Honorable Maurice H. Stans on June 12, 1973, over nationwide television.

I addressed a hand-delivered letter to you on July 5, 1973, together with enclosures. Copies are attached. As noted in that letter, even though Mr. Stans denied that he had ever seen the Magruder Memo (copy attached) and stated there was no such political fund in the Department of Commerce, the media, based upon your hearing record, erroneously referred to a "million dollar secret fund", which in fact did not exist.

In addition to the letter from Richard Whitney and two affidavits from former Secretary of Commerce for Administration Larry A. Jobe, furnished earlier, we enclose herewith another affidavit from Joseph E. Casson, former executive assistant to Mr. Stans at Commerce, stating that he had advised Mr. Magruder's office that no such political fund existed or was contemplated. Moreover, Mr. Casson has told me that he never discussed the fund inquiries with Mr. Stans and that no one else did in his presence.

It is abundantly clear that Mr. Stans had never seen the Magruder memo prior to his testimony and that there was no such political fund. If he had been asked about the memo in staff interviews, he could have clarified the matter. That was not done, however, Mr. Stans was asked to identify a memo he had never seen. Later your Committee had Mr. Magruder affirm he had written the memo but did not pursue any facts of the non-existent political fund. As a result, the public has been misled to Mr. Stans' damage and embarrassment.

Feeling that the only way to correct this matter fairly as a clarifying statement in your public and televised hearings, we suggested to staff counsel that the record be cleared up without delay in accordance with the enclosures. (See proposed statement furnished on July 11, 1973).

We again request this action be taken without further delay.

[The documents referred to were marked exhibit No. 104. Subsequent to this date further correspondence was received and is shown as exhibit No. 104A.*]

Senator ERVIN. There are a great many documents which would take too long to read over TV but they state in effect exactly what Mr. Stans testified; namely, that there was no such political fund in his department. He stated that very positively. He also at that time corroborated the testimony of Mr. Sloan to the effect that there was \$1 million which had been spent out of funds kept in safes in the offices of the committee. I do not know what the news media referred to, but in an effort to be fair to Mr. Stans, who positively denied the existence of any such funds when he testified, we will insert in the record without objection on the part of any member of the committee, a letter from his, Mr. Stans' attorney, dated July 5, 1973, a letter from Richard P. Whitney to Mr. David Dawson of the committee staff dated June 25, 1973, a verified letter from Mr. Larry A. Jobe to the chairman of the committee dated June 18, 1973, a letter from Mr. Larry A. Jobe to Mr. David Dorsen, dated June 29, 1973, and certain exhibits attached thereto, and a statement from Mr. Larry A. Jobe to Secretary Stans dated January 19, 1972, and a copy of the Magruder statement annexed to that letter of July 28, 1972, being in the form of a confidential memorandum for the Attorney General and an affidavit by Joseph E. Casson dated the 23d day of July 1973, and a statement for the record which was received by the committee on July 27, 1973, all of these will be admitted in the record. I will state on behalf of the committee that these are documents which tend to corroborate Mr. Stans' testimony that there was no political fund in the Department of Commerce while he was Secretary of that Department, and I trust that this clarifies the situation sufficiently.

TESTIMONY OF JOHN EHRLICHMAN—Resumed

Mr. EHRLICHMAN. Mr. Chairman, I have two short matters which are the result of weekend research but go to questions which were asked on Friday near the close of the session, and I wonder if I might be permitted to supplement the record.

*See pp. 2954 and 2974.

Senator ERVIN. Yes.

Mr. EHRLICHMAN. The first has to do with the question of the propriety of the manner in which Mr. Stans' testimony was presented to the grand jury. It appears that this question has been decided by the U.S. Court of Appeals in the Second Circuit in a recent case involving alleged corruption in the office of the Speaker of the House of Representatives. It is the case of *United States v. Zweig*, and in that case Zweig, who was Speaker McCormack's administrative assistant, was charged with accepting bribes or committing other illegalities as administrative assistant, representing McCormack, a Democrat, of Massachusetts, was asked to give his testimony to the grand jury, and the testimony was taken not by personal appearance before the grand jury but by three assistant U.S. attorneys coming to his office on two occasions, on one of those occasions taking his testimony in the presence of Mr. McCormack's nephew, an outsider to the proceeding.

The defendant in the case appealed to the U.S. Court of Appeals, stating very much the same kind of objection that was stated here to the procedure. In 441 Federal 2d at page 114 the court approved the taking of Speaker McCormack's testimony for grand jury use by this process.

Senator ERVIN. I will look into that decision. I have looked in the Federal statutes and I can find no statute which warrants the taking outside of the presence of a grand jury of the statement of any witness for presentation to a grand jury where that witness is available, is able bodied, and is available to the grand jury.

Mr. EHRLICHMAN. Mr. Chairman—

Senator ERVIN. So far I have found nothing to the contrary but I will look into that case and see if it reveals any such facts.

Mr. EHRLICHMAN. You and Mr. Zweig read the statute the same way but the second circuit disagreed with him.

Senator ERVIN. Well, I think that is a different principle. When you get on the trial of a case, the trial court does not undertake to review what kind of testimony was presented before the grand jury.

Senator BAKER. Mr. Chairman, could I ask for the citation of the case again?

Mr. EHRLICHMAN. It is 441 Federal 2d at page 114.

Senator BAKER. And that was from the U.S. Second Circuit Court of Appeals?

Mr. EHRLICHMAN. Yes, sir.

Senator BAKER. 414 at page—

Mr. EHRLICHMAN. 441 Fed. 2d at 114, it's a 1971 case.

Senator ERVIN. I might suggest, for the purpose of shedding further light on the subject, I request the staff of the committee to communicate with the Department of Justice and with the U.S. District Attorney for the District of Columbia, and with the assistant district attorneys who had actual charge of the prosecution of the case, and with the special prosecutor, and ask them to furnish to this committee a copy of the statement made by Secretary Stans in the Department of Justice to the prosecuting attorneys. That would clearly be admissible either to corroborate or to contradict Secretary Stans and it would not fall within the exemption provision of testimony before the grand jury

because it would be a statement made before third parties and I ask the staff to ask for that.

Mr. EHRLICHMAN. Mr. Chairman, the other matter that I have—

Senator BAKER. Before I go to Mr. Ehrlichman, do I understand, Mr. Chairman, you are asking for a copy of the statement made by Mr. Stans to the U.S. attorneys that was subsequently submitted to the grand jury?

Senator ERVIN. I don't know whether it was submitted to the grand jury or not. I don't know what was submitted to the grand jury and I have no way to find out.

Senator BAKER. Do we make a distinction between what was and was not submitted?

Senator ERVIN. Yes.

Senator BAKER. Thank you.

Senator ERVIN. In other words, all I want is the statement made in the presence of the prosecuting attorneys. I don't want anything that happened before the grand jury. We are not entitled to it.

Mr. EHRLICHMAN. Mr. Chairman, the other matter I have was in supplement to my answer to Senator Montoya on the subject of tax returns. I have been provided with a copy of the Congressional Record for April 16, 1970, pages 5911 to 5924 which is a colloquy bringing forth contrasting procedures under the Kennedy administration and the Nixon administration with regard to White House access to income tax returns and other tax records.

It appears that the regulations which the Nixon administration imposed upon such access were a novelty, they had not been in effect before. They required requests in writing and they enumerate the number of such White House requests up to this 1970 date and it is a total of nine requests. I would point out to the committee also the practice under the Kennedy administration where 6 days after inauguration, Mr. Bellino, special consultant to the President, called on the Commissioner of Internal Revenue and undertook inspection of many, many tax returns for days at a time. There is extensive description of Mr. Bellino's examination of the tax return of various individuals for "days on end" at page 5913.

Senator ERVIN. Did President Nixon at any time between the time that the break-in of the Democratic headquarters in the Watergate became public knowledge, down to the 21st day of March 1973 ask you to ascertain for his enlightenment how it happened that some of the burglars caught in the Watergate had funds in their pockets which came from the Committee To Re-Elect the President?

Mr. EHRLICHMAN. Ask me to personally ascertain that, Mr. Chairman?

Senator ERVIN. Yes.

Mr. EHRLICHMAN. He did not ask me to personally involve myself in any inquiry or investigation in this matter until March 30. He did ask me, and the only request of me that might bear on this was a request he made to me about the 6th of July, a matter of 3 weeks after the break-in where he asked me to direct Pat Gray, the Director of the FBI, to make an unlimited investigation, and to take no instructions from anyone as to the scope of the investigation, but Mr. Gray alone was to determine that scope and I did convey those instructions to Mr. Gray.

Senator ERVIN. Now, I may be wrong but I construed your testimony at the moment that the President asked you to talk to General Walters about funds that had been sent into Mexico?

Mr. EHRLICHMAN. Not specifically, no, sir.

Senator ERVIN. Well, were those funds mentioned to you by General Walters?

Mr. EHRLICHMAN. Those funds were mentioned in the meeting and I can't recall who raised the question, but those—that circumstance, not the fund themselves, but the circumstance of there being a Mexican source of money, somehow came up in the meeting by one of the participants using that as an example of the kind of thing which might involve a CIA activity.

Senator ERVIN. Well, did you not later learn that those funds found their way into the bank account of Bernard L. Barker?

Mr. EHRLICHMAN. Sir, as I understand it, the CIA about 6 days later determined that there was no connection with any CIA activity and they so informed the FBI on the 29th, I believe it was, and that letter of July 6 between the CIA and the FBI gives the date by, I think, it was about 6 days later the CIA told the FBI there was no so-called Mexican checks.

Senator ERVIN. That is not an answer to my question.

My question was if you didn't ascertain after that time that those Mexican funds had found their way at least temporarily into the bank account of Bernard L. Barker, one of the burglars caught in the Watergate?

Mr. EHRLICHMAN. Well, I didn't have any special knowledge. I believe I read that in the newspaper, Mr. Chairman.

Senator ERVIN. And you also found out that some of those funds that were withdrawn from the Barker bank account were the funds in the pockets and the bedrooms of burglars?

Mr. EHRLICHMAN. There again, I believe I read that in the press.

Senator ERVIN. Didn't that suggest to your mind there was something wrong in the Committee To Re-Elect the President?

Mr. EHRLICHMAN. Certainly.

Senator ERVIN. And that was way back in the summer of 1972.

Mr. EHRLICHMAN. At just about the time we knew the FBI was all out in its investigation of this matter.

Senator ERVIN. Senator Baker, I might state that, having finished myself, I am going to impose the 10-minute rule on others for this hearing.

Senator BAKER. Mr. Chairman, I will expedite your 10-minute rule somewhat by saying that Mr. Ehrlichman has been on the stand now for his 5th day. We have covered a great amount of testimony. I am sure there are other questions that would occur to all of us, were we permitted now, after a recess, to go over the transcript and derive and suggest new lines of inquiry.

I think, however, Mr. Chairman, in the interest of time that I am going to forego any further questions with the full understanding, Mr. Ehrlichman, that if there are other matters particularly within so-called phase II or phase III of this operation of this inquiry, having to do with the alleged "dirty tricks" operation or more in detail about the transactions, I understand you, as other witnesses, would be willing to return and to testify further on that or any other subject.

Mr. EHRLICHMAN. I would, Senator. I don't believe that I would have a great deal of information on either of those phases to assist but I would be happy to be available.

Senator BAKER. The only point I make is if we forego questions now, it does not imply we cannot ask you questions later.

Mr. EHRLICHMAN. Certainly.

Senator BAKER. Mr. Wilson handed a copy of the Congressional Record dealing with income tax during the Kennedy and Nixon administrations. Was it your wish that that be examined by the committee or made part of the record or what was the purpose of that?

Mr. WILSON. I just thought it would be made part of the record but, in effect, you want to ask any questions about it, make any statements, it is a very long statement. Very long colloquy, rather.

Senator BAKER. And it is your contention it relates to the testimony of the witness, Mr. Ehrlichman, in response to queries put largely by Senator Montoya on the examination of income tax returns?

Mr. WILSON. That is the purpose of it, sir.

Senator BAKER. Mr. Chairman, if there is no objection I would like to see the document identified for the record and accepted for that purpose.

I have no questions, Mr. Chairman.

Senator ERVIN. The document will be identified for the record and received as an exhibit.

[The document referred to was marked exhibit No. 105.*]

Senator ERVIN. Senator Inouye.

Senator INOUE. Thank you, Mr. Chairman.

Mr. Ehrlichman, may we now study your April 13, 1973, C.C. and Shapiro interview note?

Mr. EHRLICHMAN. Yes, sir. I will get my copy.

All right, sir.

Senator INOUE. Will you please proceed, sir. On the first line, executive privilege, I believe it says.

Mr. EHRLICHMAN. Yes. This—I should say that this meeting was held primarily at Mr. Colson's request at the end of the day on the 13th of April. The first thing that he said was that he had some—some suggestions and points of view that he would like to have conveyed to the President and that was the purpose of the—the purpose of the meeting, but I also conceived of it as some opportunity to develop additional information because I was in the course of this inquiry. That first line refers to R. K. being Richard Kleindienst to the Congress about executive privilege and he simply noted that it has the Hill up in arms.

Senator INOUE. Please proceed, sir.

Mr. EHRLICHMAN. Then he said that Mr. Hunt at 2 p.m., on the coming Monday would once again be testifying both from the standpoint of hearsay and firsthand. He said his sources were both within the Government and Mr. Bittman, Mr. Hunt's attorney, that he would testify that funds had traveled—

Senator INOUE. What funds are we talking about?

Mr. EHRLICHMAN. Well, we are talking about these funds for the defendants in the criminal case, that fund from Parkinson and—traveled from Parkinson and O'Brien to Hunt to the Cubans and on

*See p. 2978.

other occasions from O'Brien to Hunt to Mrs. Hunt, and I have down the sum of \$10,000 in the latter—in the latter category. He said all of this transmittal of funds information will be coming out.

Then he said with relation to Mr. McCord, as I recall the setting of this was that McCord was coming up with all sorts of wild stories. His later story was that Hunt and McCord, and he didn't know whether Liddy has been involved in this or not, has made a trip to Las Vegas. They landed. They had an airplane standing by. They were going to break into the safe of Hank Greenspun who was a publisher in Las Vegas and that McCord was saying that this was a maneuver masterminded by Charles Colson. Mr. Colson vehemently denied that he had any knowledge or acquaintanceship with such a maneuver or that he had anything to do with it, and he cited this simply as an example of the far out kind of allegations that McCord was making at that time. I said, well, where does such a thing all fit in this whole—in this whole Watergate business and he said, well, I don't think that it does fit and McCord said that it was some kind of a Howard Hughes operation allegedly.

Now this, Senator, I hasten to point out, is kind of hearsay and I do not assert the truth of any of this, but I am simply describing what Mr. Colson was describing as Mr. McCord's rather extreme charges at that point.

Then he went on to tell another version of the inception of Watergate which he termed "Liddy hearsay" which was to the effect that Howard Hunt opposed the Watergate break-in, the second break-in, that Hunt characterized it as stupid, that Liddy told Hunt that it could not be called off, that Mr. Mitchell had ordered it and that it must go ahead.

Now here again, Senator, I do not vouch for any of the reliability of that but that is simply hearsay second- or third-hand.

Mr. Colson said he was also picking up the rumor that Mr. Mitchell had a "blood oath" to Mr. Liddy that there would be a Presidential pardon for Mr. Liddy.

He said that he thought that there was a possibility of Liddy corroborating McCord—pardon me, of Hunt corroborating McCord and you would have a situation of two people testifying to hearsay, so-called double hearsay. He then reported to me on information that they were hearing and again this is in the rumor stage, about two grand juries who were investigating Mr. Mitchell. In addition to the New York grand jury looking into the Vesco matter, that there was a second grand jury in Washington, D.C., which was looking into money which passed from a man named Klein to Mr. Mitchell in consideration of Government contracts for Klein.

Mr. HUNDLEY. Excuse me, Mr. Chairman, I do feel I must break in. I discussed this with Mr. Hunt's and Mr. Mitchell's attorney and note for the record in response to a question, Mr. Ehrlichman has now mentioned the Vesco grand jury in New York, he is touching upon another matter that is completely unrelated to this hearing and I would urge the chairman to rule at this time that there should not be any more evidence taken about this April 13 meeting.

Senator ERVIN. This committee agreed at the start as I understand it, at least agreed when Mr. Mitchell was here and also when Mr. Stans was here, that we could not go into the Vesco matter. While the committee undoubtedly has authority to investigate all campaign contri-

butions, the committee unanimously felt that out of fairness to Secretary Stans and Mr. Mitchell and in view of the fact that there was an indictment pending about this, that we ought to refrain from going into it. I would, therefore, request that you omit any statement in regard to the Vesco matter.

Senator BAKER. Mr. Chairman, may I say that I entirely agree with you. It really is probably not a matter of law but a sense of fair play that would indicate when there is a criminal case pending, when there is an indictment, when there is a trial impending, that not only the witness who may be the named defendant in this case ought not to have to testify on that subject, but I think other witnesses should be cautioned to avoid it as well. I think the statement is well taken and I commend you for urging that precaution in the interest of fairness.

Thank you very much.

Senator ERVIN. And without objection, the committee will strike from the record any testimony thus far given in reference to the Vesco matter.

Mr. EHRLICHMAN. Mr. Chairman, I might say for myself, I do not feel comfortable about perviewing second- and third-hand hearsay and a great deal of this I cannot, I cannot assert to be true but it is simply my notes of a meeting and what someone else asserted to me.

Senator ERVIN. Yes. I think it is unfortunate that all those of us who interrogated witnesses do not confine our questions to elicit from the witness what he has personal knowledge of or in reference to statements made by parties involved with him. But unfortunately, it seems impossible to enforce that kind of a rule in congressional hearings.

Mr. EHRLICHMAN. If I may skip, then, down to the name Mardian, toward the bottom of that page—

Senator INOUE. Mr. Chairman, in view of the possibility that the rest of this interview might inadvertently touch upon the Vesco trial, I would like to forego any inquiry at this time and go into something else.

Mr. EHRLICHMAN. Senator, could I put something in perspective on the last page of these notes? Somehow or other these notes have appeared in the press and there are a number of adjectives which have been speculated in the press very unfairly to Mr. Mitchell, and I wish, if I may, simply to make clear that these six or seven references to Mr. Mitchell on the last page were Mr. Shapiro's secondhand characterization and did not in any way constitute an evaluation either by Mr. Colson or me of Mr. Mitchell, either as an individual or as a potential witness, and I am afraid some very cruel inferences have been derived from this last page that are totally unjustified and unfair.

Senator ERVIN. Thank you.

Senator INOUE. Mr. Ehrlichman, in the last few minutes remaining I have a few questions here which may be a bit repetitious but just for the record, sir, did the President ever ask in your presence prior to March of this year for information on exactly how the Watergate break-in came about?

Mr. EHRLICHMAN. Yes, sir. In this sense, that on repeated occasions the President asked that a complete and definitive statement of the whole Watergate matter, how it was planned, how it was executed,

the whole picture, be set down on paper and released, and I have gone through my notes of meetings at which this subject was discussed, and can say that on at least eight occasions the President made that request.

Senator INOUE. Did the President ever receive satisfaction?

Mr. EHRLICHMAN. No, sir, and, I think, one of those occasions was just prior to his sending John Dean to Camp David and set all this down in March of this year, but he asked Clark MacGregor to do this back in September, he asked for a statement on a narrow part of this, on Segretti, in November. In November later in the month, around Thanksgiving time he asked that, in response to a letter that he had received from a friend about this expressing real concern about it he said that, he wanted this cleaned up before the Congress came back, that a complete definitive statement go out. He did the same thing again on December 8 where he instructed John Dean to do a Watergate summary. He did the same thing on December 11 and said he wanted that statement by Christmas. Again he did it prior to our meeting in La Costa on February 10 and one of the major purposes of that meeting was to impress upon Mr. Dean the urgency for such a statement. He did it again in my presence in a conference with George Bush on March 20, and again on March 22 in this meeting that Mr. Mitchell, Dean, Haldeman, and I had with the President where he said that he wanted John Dean to complete such a statement by that weekend.

Senator INOUE. Were you aware, when did you become aware of the President's request to Mr. MacGregor?

Mr. EHRLICHMAN. On September 13.

Senator INOUE. Didn't you know at that time Mr. MacGregor hadn't any information to give?

Mr. EHRLICHMAN. Well, the information had been given in Mr. MacGregor's presence and in the President's presence by the Attorney General, Mr. Kleindienst on the previous day, at which time Mr. Kleindienst assured the Cabinet and Mr. MacGregor and others assembled that in point of fact no one in the White House was involved, that the investigation had been extremely vigorous by the Department of Justice, that the seven persons responsible had, in fact, been indicted, and he gave a total endorsement to the method of investigation, and the results of that investigation.

The President felt that there were ample facts available at that point for Mr. MacGregor to do a definitive statement.

Senator INOUE. How do you respond to Mr. MacGregor's statement that he was "lied to" by you.

Mr. EHRLICHMAN. Well, I think that what Mr. MacGregor has done, I saw that in the press over the weekend. Mr. MacGregor has said, "Yes, they asked me to make a statement back in July, August, and September but I should have known about the CIA and I should have known about the special unit, and I should have known about other things that were happening in the White House." It seems to me that, if I may say so, that is an irrelevancy. In point of fact, back in the convention and immediately after the convention days, and following up on the Attorney General's complete report on September 12 to the President, Mr. MacGregor and others, that Mr. MacGregor

was in an excellent position to step out, based upon this extensive Department of Justice investigation, and make a very full and complete statement of the facts as we believed them at that time.

Senator INOUE. Would not that have been repetitions; didn't the Attorney General himself give the President a report?

Mr. EHRLICHMAN. Yes, sir.

Senator INOUE. Why should Mr. MacGregor, who was listening in, give another report?

Mr. EHRLICHMAN. Well, the thought here was there should be two reports, one with regard to the White House and White House involvement which in fact the President did get in August, but the other part and the important part was the involvement or noninvolvement of the various Committee To Re-Elect personnel and that was the report which the President was pressing for from Mr. MacGregor in September.

Senator INOUE. My final question in this round, sir.

Mr. Mitchell in his testimony suggested that he withheld information from the President, and in fact he lied to the President because he didn't want the lid to be blown off.

Did you ever keep information away from the President or lie to the President?

Mr. EHRLICHMAN. I have certainly never lied to the President, Senator, at least I hope I never have. Certainly not told him intentionally anything that was not true.

Now, as far as keeping things from the President, a great deal of my time was spent trying to evaluate what should and should not be considered a matter for Presidential attention, and certainly I did not indiscriminately just shovel everything that came on my desk to the President. I have made dozens and I suppose hundreds of judgments over the 4 years that matters of information and even matters for decision need not go to the President. That in the hierarchy or priority of how he should devote his time, that this was, whatever it was, was a matter which would need necessarily occupy his attention or that could better be decided by someone else, and so I have on literally hundreds of occasions been involved in a decision of that kind.

Senator INOUE. Did you consider the break-in of Dr. Fielding's office important enough for Presidential notification?

Mr. EHRLICHMAN. I did not.

Senator INOUE. That was not important?

Mr. EHRLICHMAN. It was a—it was an event, it had occurred. There wasn't anything that the President could do about it. There wasn't anything that he was called upon to do about it. It was in a continuum of investigation, and I simply made the judgment that it would unnecessarily tax his attention under circumstances that really it was something that he could do nothing about.

Senator INOUE. Didn't you consider the meetings involving Mr. Liddy, Mr. Magruder, Mr. Mitchell, Mr. Dean, and the office of the Attorney General and later in Key Biscayne were important enough for Presidential notification?

Mr. EHRLICHMAN. Certainly, and I did notify him of that within an hour or two of having learned of it.

Senator INOUE. When did you learn about this?

Mr. EHRLICHMAN. I learned about that in my interview with Mr O'Brien in Key Biscayne—or in San Clemente, in the early part of April of this year, on April 5.

Senator INOUE. Didn't you know about this in June of 1972?

Mr. EHRLICHMAN. No, sir.

Senator INOUE. You mean to say you were kept in the dark until April of this year?

Mr. EHRLICHMAN. Yes, sir.

Senator INOUE. Mr. Strachan never discussed this with you?

Mr. EHRLICHMAN. No, indeed.

Senator INOUE. Mr. Dean never discussed this with you?

Mr. EHRLICHMAN. No.

Senator INOUE. Mr. Haldeman never discussed this with you?

Mr. EHRLICHMAN. No.

Senator INOUE. Weren't you curious when reports were being made in the press about these meetings?

Mr. EHRLICHMAN. When reports were being made in the press?

Senator INOUE. Suggesting that these meetings had been held.

Mr. EHRLICHMAN. Well, I think those reports—I don't know just when those reports appeared, Senator, but I don't think they were very much previous to my having talked to Mr. O'Brien here.

Senator INOUE. I thank you very much, sir.

Mr. WILSON. Mr. Chairman, my periscope indicates that the Zweig opinion has been brought to you and to save some time it is the last footnote on the last page of the opinion. You don't have to read anything else.

Senator ERVIN. I was intrigued by this statement in the opinion in requiring Zweig to come before them. It says on page 121:

Indeed in investigations such as the grand jury was conducting here, the grand jury and the government would have been subject to proper criticism if the grand jury had failed to indict Zweig's attendance as a witness. It is altogether in the public interest that grand juries should inquire with care and thoroughness before they file formal charges against anyone.

Senator BAKER. Mr. Chairman, I might make a statement, if I may. Since I indicated when I remarked on this situation on the previous examination of Mr. Ehrlichman that I, too, thought it was improper to conduct the hearings other than before the grand jury. I freely confess I was not aware of the case that you have now presented to me. I also note that footnote 70, page 121, lists some five or six other cases to the same effect, and that the Shepherd citations compilation shows that in this case certiorari was denied by the U.S. Supreme Court, which, of course, has the effect of affirming the second circuit court of appeals' decision. The operative language is footnote 7, which says:

One such contention,

That is, that indictment was defective—

is that the indictment should have been dismissed because the grand jury received testimony from Speaker McCormack in an unlawful way. Instead of calling McCormack to testify in person the grand jury sent three assistant U.S. attorneys to interview him on two occasions, once in the presence of his nephew.

And to make a long story short, the court of appeals held, and the Supreme Court concurred inferentially by denying certiorari, that was the appropriate way to proceed.

Now the question still presented, I suppose, and which this committee ought to reserve, Mr. Chairman, is whether or not the test of inconvenience applied to Speaker McCormack would similarly be applied by the court to Mr. Stans and, of course, we do, or at least I do, reserve that question; but I think counsel for the case——

Mr. WILSON. Mr. Vice Chairman——

Senator ERVIN. Just one observation. When the Supreme Court denies application for a writ of certiorari, it makes no decision. It does not express an opinion that the opinion of the lower court is good or bad, wise or foolish, or unsound, it just refuses to take the case.

It says here that Speaker McCormack was excused because it was difficult and inconvenient for him to come. That is not the testimony here. The testimony is that it was to spare him the humiliation of having to be confronted by the press. But this is beside the point that I was making, and the point that I am making is: Without regard to the good intentions of the President in requesting Mr. Stans be excused from a personal appearance, and without regard to your action in communicating the President's request to Mr. Petersen, the fact is that in the absence of an opportunity to cross-examine Mr. Stans the grand jury might have been denied evidence which would have justified the grand jury in considering whether there should be some indictments returned in respect to persons who were officers of the Committee To Re-Elect the President. It goes to the wisdom of action. I am not too much concerned about the illegality. I think it is very unfortunate for the President of the United States for even the best of motives to undertake to make a request which has the effect of obviating an ordinary feature of the judicial process; that is, the appearance of a witness before a grand jury and according to the grand jury an opportunity to question the witness.

Senator BAKER. Mr. Chairman, I want to say only one more thing. I do not want to belabor the point. I said as far as I was concerned, I indicated on the record it was unlawful to do that. Now, I find it is at least arguably lawful to do that. It was at least in this factual situation when Speaker McCormack was not required to appear before the grand jury to give his deposition. I think the committee will reserve, to the incoming of the report, the evaluation of the wisdom or lack of wisdom of doing it that way, but I apologize and that was the reason for my interjection, of the witness and Mr. Wilson to previously expressing my impression that that was an irregular procedure. Apparently, that is not, on its face at least, an irregular procedure and I have nothing further to say about that.

Senator ERVIN. I think it is irregular in the sense that it is not regular——

[Laughter.]

Senator ERVIN [continuing]. And I think it is very unfortunate. We can maybe clear up the matter if we ever get a statement of what he told the prosecuting attorneys and I certainly agree with the Senator from Tennessee that this is a matter to be weighed and considered by the committee later and not on the spur of this moment. I was merely suggesting some misgivings of mine.

Senator BAKER. Thank you.

Senator ERVIN. And I have legal misgivings as well. Notwithstanding the fact my experience has been, in the long years of practicing law, that I can find a Federal decision in one of the circuits that will sustain any point on any side of the question.

Senator BAKER. It has been my experience practicing law too, when the Supreme Court denies certiorari I am out of business.

Senator ERVIN. Yes; and so is the Supreme Court.

Senator BAKER. That is up to them to decide. I have argued long and hard with them and sometimes I won and sometimes I lost, and I like it better winning but that is not always the way it goes.

Senator ERVIN. Senator Gurney.

Senator GURNEY. Mr. Ehrlichman, on April 14 you gave your report to the President on Watergate. On April 30 you resigned from the White House staff. Now, in the 2 weeks in between you had several meetings with the President of the United States. I presume some of these were on Watergate and conversations that led up to your resignation.

Will you tell the committee what you said to the President and what the President said to you at these meetings?

Mr. EHRLICHMAN. Senator, notwithstanding Watergate, the business at the White House went on during those 2 weeks and quite a few of these meetings were with regard to the business at hand, and I will—

Senator GURNEY. I am not interested in that, only Watergate matters.

Mr. EHRLICHMAN. Right. Quite a bit of the conversation during this period of time had to do with John Dean's status in the White House. Henry Petersen became the President's confidant and righthand man on Watergate, following April 15. The President decided that he would work with Mr. Petersen personally. He did. He had a number of meetings with Mr. Petersen who gave him a good deal of additional information which I did not have and to which I am not privy.

One of the first things that Mr. Petersen apparently asked the President to do was fire Mr. Haldeman and me.

Senator GURNEY. When was that, do you know?

Mr. EHRLICHMAN. Well, it must have been very early in the game, shortly—on or shortly after the 15th.

The President pressed him for the basis of this request. Mr. Petersen acknowledged that there probably was no legal liability but that he felt that as a matter of appearances that this is the step that the President should take.

At the same time Mr. Petersen was urging the President not to fire Mr. Dean until such time as the prosecutors had had an opportunity to perfect their negotiations and their interrogation of Mr. Dean. And so there was a lot of conversation between us over this period of time both as to what our status should be in the White House and what Mr. Dean's status should be.

On Monday, the 16th, I believe it was, the President telephoned me and said that he was going to see Mr. Dean that morning. He had decided that Mr. Petersen's desires to the contrary notwithstanding, he was going to request that Dean either take a leave or resign.

He asked that letters be prepared that would be appropriate to both of these alternatives and he more or less dictated what should be in

those letters. I say more or less. He literally did dictate what he wanted in them. I had my secretary type them basically from the notes that I took from that conversation of the President and I understand that later on he did present them to Mr. Dean and Mr. Dean refused to sign either one. So he reported that to me later on in the day.

There were those kind of—those kind of questions that were going on in discussion. At a point in time he asked Mr. Petersen—

Senator GURNEY. Stop right there. Did the President tell you why he wanted to fire Mr. Dean or have him resign?

Mr. EHRLICHMAN. Well, he felt that since Mr. Dean was continuing to come to the—come to the White House and apparently had access to his files and to other files presumably, in the central files of the White House, that it was—they had then basically an adversary relationship and that it was an unhealthy situation, there ought to be a clean termination.

This obviously did not take place. Mr. Petersen, I gather from talking with the President, Mr. Petersen strongly urged the President following that, to make no move where Mr. Dean was concerned and the President acquiesced in that.

We became—that is, Mr. Haldeman and I—became the targets of newspaper and other media attention about the 22d, about Easter, and from then on through the 30th, very vigorous newspaper attack, is the only thing I can say. The Los Angeles Times printed a totally dishonest and false story about my intervention in some Middle East activity. We were continually finding—I was continually finding myself laying aside the work of the day to prepare press statements or to research documents, things of this kind.

What I am leading to, Senator, is—

Senator GURNEY. Just a moment. At that point I think we should strike from the record—Mr. Chairman, I think we should strike from the record mention of this *Vesco* case.

Senator ERVIN. Yes.

Senator GURNEY. We are trying to keep this—

Senator ERVIN. Yes; it can be stricken from the record.

Mr. HUNDLEY. Mr. Chairman, I just want to state for the record, you know, the witness is being responsive and he has mentioned this case twice this morning. It just does not suffice for Mr. Mitchell's purposes every time it happens to strike it from the record.

Senator ERVIN. Well, we are glad to have the interjection about the *Vesco* matter stricken but I believe that is as far as we can go at this time.

Mr. EHRLICHMAN. In any event—

Senator ERVIN. And I will ask the witness to—

Mr. EHRLICHMAN. I am sorry. That—

Senator ERVIN [continuing]. Any refrain from further reference—

Mr. EHRLICHMAN. I had a personal interest in that one. I am afraid, Mr. Chairman, and this was the instance, however, that directly led to my realization that I simply could not do my job there and continue with the denials and harassment and all that that was going on.

We began discussing very seriously with the President the need for—and this was separate—I began discussing and I understand Mr. Halde-

man began discussing with the President the need for a leave of absence about this point in time. And as we progressed into this week of April 23, that was the subject that was under serious consideration, alternatives, who could pick up for me and carry on the domestic side and work the policy questions, move the information to the President, and so on. And by the time the President went to Camp David on, I think the 27th, after we returned from Mississippi—from Senator Stennis' ceremony in Mississippi—I think the President was scheduled in his own mind, and it was my impression from talking with him on the airplane, that he had settled in his own mind that we should take a leave of absence at that point.

Mr. Haldeman and I discussed this on the 28th and it was our mutual feeling at that point that even a leave of absence thing would be misunderstood and that we should simply make a clean break of it. The President invited us to Camp David on Sunday, the 29th, and we separately discussed with the President our point of view on this at that time. We both had extended private meetings with him and the upshot of that was we submitted our resignations.

Senator GURNEY. Then, in summary, between April 12 and April 30, in these meetings where you discussed Watergate, it was mainly a discussion of how more and more you were becoming ineffective because of the media exposure to Watergate, including you and also Mr. Haldeman. And those were principally the discussions that led up to the resignation?

Mr. EHRLICHMAN. There were other points obviously being raised. Mr. Petersen was pressing the contention, for instance, that I had urged Hunt to get out of the country and I had urged Mr. Dean to destroy the contents of the safe and he was playing back to the President in justification of his argument that we should be fired—testimony that was being picked up by the prosecuting attorneys. So I in turn was trying to gather such evidence as I could on those points and as I said before, I talked to the people who were at the meeting of June 19 and I reported to the President what they had said.

Likewise, during this period of time we consulted counsel and laid out the facts for counsel and took his opinion as to whether or not we were guilty of any legal wrongdoing and made that report to the President. So we were very much personally involved in trying to indicate to the President what our point of view was, our recollection of the facts, where the truth of this matter lay.

Senator GURNEY. Let me put it this way: In any of these meetings did the President say to you, "John, it has come to my attention that you were involved in the coverup in such and such a fashion and I cannot keep you on because of that?" Did any of the conversations go in this vein?

Mr. EHRLICHMAN. No. They went in the vein, "this fellow is making accusations against you," being John Dean. "These are serious allegations. I have confidence that what you are telling me is true but let us face it, the prosecuting attorney through Mr. Petersen is strongly urging that I put you on leave of absence and I have to listen to that advice."

Senator GURNEY. Did the President ask you to resign?

Mr. EHRLICHMAN. No, sir.

Senator GURNEY. That is all, Mr. Chairman. In the interests of time I am not going to take my full 10 minutes.

Senator ERVIN. Thank you.

Senator Montoya.

Senator MONTTOYA. I just have one question, Mr. Chairman.

The other day we brought out that the President in two press conferences, the press conference of April 17 and the press conference of April 30, 1973, had alluded to the date of March 21 which was the date, significant date in his mind, when he had really ordered an intensive investigation. Then in your opening statement you indicated that you had been commissioned by the President to start an investigation or an inquiry, as you called it, on March 30.

Now, can you tell me what information was given to the President as a result of the intensive investigation which began on March 21 and up to the time that you assumed your own inquiry on March 30?

Mr. EHRLICHMAN. That was never presented to me, Senator, in any sort of capsulized or organized form. In other words, I didn't sit down with the President and—in a situation where he said to me, now, here is everything I have learned in the last 9 days. So—but at the same time in his reaction to this narrative report which I gave him, it was evident to me that he had information or impressions, at least, about this matter which were independent of anything that I was advancing to him. So that—and I know that during the time that I was working on this, on and after the 30th, that the President was not limiting his sources of information to just what I had told him. I said the other day that in this meeting of March 22, the President must have been doing one of two things, either proceeding without any information gained on the 21st or else he was playing a very cool game and setting traps for people.

In my own mind I am convinced it was the latter, that the President had picked up enough information to begin to get started on this and that he was—he was checking a lot of people through a lot of other people. I know, for instance, he had me check on Bob Haldeman and I am sure he didn't tell Haldeman that I was doing it.

Senator MONTTOYA. I assume when he made the statement at the press conference, to wit, "On March 21, as a result of serious charges which came to my attention, some of which were publicly reported, I began intensive new inquiries into this whole matter."

I interpret this statement to mean that he received serious charges personally and also through the press.

Are you aware of any communication by anyone to the President with respect to serious charges which came to his attention?

Mr. EHRLICHMAN. Well, I have heard the testimony here that Mr. Dean had this conversation with him on the 21st. Mr. Haldeman was in some of that meeting.

At the same time, or right around this period of time, Mr. McCord, of course, was making charges both in the press and through a letter to the district judge. I assume that all of those are referred to in that statement but I don't know.

Senator MONTTOYA. Well, you are assuming that he was referring partly to the report which Mr. Dean had given him?

Mr. EHRLICHMAN. I assume so but I don't know that.

Senator MONTTOYA. All right.

Now, why would not the President come out with this information and also the information which you imparted to him on April 14 at his April 17 conference?

Mr. EHRLICHMAN. Just say that this is everything I know.

Senator MONTAYA. What actually you had imparted to him and you indicated that you had really given him some very substantial information.

Mr. EHRLICHMAN. Well, I think in going through the notes here with Senator Inouye and your examination, you see that a lot of what I gave him was hearsay once and twice removed. I would have felt it very unwise and unfair if the President had simply made a public statement of all of this hearsay at that point in time. It would have very unfairly raised charges and inferences against people that may ultimately prove to be totally false. So I think what it stands for, the whole thing stands for, Senator, is that the President was alerted, he began to move, that he needed a great deal more information even on April 18 than he had in order to say definitely this is what happened, this is what happened, and this is what happened, without being terribly unfair to innocent people.

Senator MONTAYA. That is all the questions I have, Mr. Chairman.

Senator ERVIN. Senator Weicker.

Senator WEICKER. Mr. Ehrlichman, when did the name of Judge Byrne first arise to your knowledge as a possibility for the FBI directorship?

Mr. EHRLICHMAN. I believe, Senator, that his name was on the original list of prospects, oh, I don't know when, perhaps back as far as shortly after Director Hoover's death. I am not sure but it had always been one of the names on a list of seven or eight names.

Senator WEICKER. And you indicated to me in my questioning last Friday that around this period of time, March 7 and 8, there was certain disenchantment as to Mr. Gray.

Mr. EHRLICHMAN. Yes, sir.

Senator WEICKER. Would it be somewhere in around that period that other names were being considered?

Mr. EHRLICHMAN. No, I don't believe—I don't believe as early as that. To the best of my recollection, other names were not really considered until about the time that the President went west, which would have been about March 30. I could be wrong on that. But that is the first that I recall any serious decision of alternatives.

Senator WEICKER. Well, in their testimony, let's just review certain facts.

In the conversation, the taped telephone conversation, between yourself and John Dean on March 7 or 8, and I am quoting verbatim now:

Ehrlichman. Well, I think we ought to let him hang there. Let him twist slowly, slowly in the wind.

Dean. That's right. I was in with the boss this morning and that's exactly where he was coming out. He said I'm not sure that Gray's smart enough to run the Bureau the way he's handling himself.

Now, in your questioning about this last, and I am reading verbatim from the transcript, your response was:

Mr. Ehrlichman. Well, Senator, I think you will remember those confirmation hearings and the revelations and the manner in which Mr. Gray responded during the hearing and I think it is fair to say there was pretty general disenchantment in the manner in which he handled himself during that time.

What I was looking at while you were reading was the various events that took place starting back around the first of the month in those hearings and climaxing on the 23rd of March with Mr. Gray saying that John Dean probably lied to the FBI and then later probably recanting that charge to Mr. Dean and admitting that it was an overstatement and so on. At this point in time there was general disenchantment of Mr. Gray's conduct in the process of confirmation, there is not any question about it.

Do you recall having an interview with the Chicago Tribune on March 28?

Mr. EHRLICHMAN. Yes.

Senator WEICKER. Well, let me go ahead and cite to you your responses in that interview. This, mind you, is on March 28, some 20 days after your comments and Dean's comments, and I think they are also—the interview can be taken in the light of what you told this committee last Friday.

Question. Would the President be unhappy if the Senate refused to confirm L. Patrick Gray as Federal Bureau of Investigation's Director in light of the President's repudiation of Gray's offer of raw FBI files to the Senate Judiciary Committee and subsequent incidents in which Gray seemed to tacitly agree that John Dean might have lied to FBI agents?

Answer. I don't think that the Administration's position on Mr. Gray is necessarily related to those two incidents. The President supports Mr. Gray's nomination enthusiastically and has from the beginning. As far as I know, there is no change.

Question. Is there a backup point?

Answer. No, no one else is under consideration at all.

Question. The President made it a point to ask Ron Ziegler (White House Press Secretary) to express his confidence in John Dean the other day. Was the absence of such an expression from Mr. Gray significant in any way?

Answer. Oh, no. Ron. I am sure has expressed confidence in Mr. Gray or he would if asked. I certainly do and I know the President would want me to.

Question. He is still the man for the job as far as you are concerned?

Answer. Oh, sure.

Now, Mr. Ehrlichman, specifically I would like to know what the version is. Did the White House support Gray's nomination or not?

Mr. EHRLICHMAN. We supported Gray's nomination right up to the time it was withdrawn.

Now Senator, I am sure you realize when a nomination is still up here and still before the Senate, we support that nomination right down the line. What I may say to John Dean privately, the inhouse disenchantment with that nomination, certainly would never be reflected in statements to the press. Until the President decides that he is going to have to withdraw that nomination, then by George, we are going to root for the—we are going to root for the team.

Senator WEICKER. Can we paraphrase "by George, we are going to lie to the press"?

Mr. EHRLICHMAN. We are certainly not going to indicate to the press our disenchantment, that is right.

Senator WEICKER. One last question. I just received this document and I think it raises some interesting questions I have not done and I don't want to impede the committee the necessary background on it except as I have the document in my hand now I am going to read it to you and I will show it to you. I don't know if we have a copy or not. It is from the White House, Washington. It is dated October 2, 1972. For John Dean, and it is from John Ehrlichman and it has your initial "E" on your name there and I will show this to you.

Mr. DASH. We have copies.

Senator WEICKER. Do you have a copy of it? Will someone please give Mr. Ehrlichman a copy?

The memorandum dated October 2, 1972, from the White House:

For John Dean: Herb Kalmbach, thinking ahead to the possibility of the matter of the privilege being raised at some time or another, suggested that there should be a written retainer arrangement in existence in advance.

He has written out this long-hand draft. I'm sure you'll find the basic question of whether or not such a letter is advisable to be the first hurdle.

If you think that one may be inadvisable I would suggest you talk to Herb direct. Otherwise, would you work on a revision? John E. Ehrlichman.

Now, the draft which Mr. Kalmbach wrote out reads as follows:

Dear Mr. Kalmbach: For your files this letter is to confirm that you have been and are now acting as legal counsel to the White House on various assignments. In such capacity as our legal counsel, we expect you to treat these matters as being entirely confidential. We consider all aspects of these assignments to be within the attorney-client privilege and you are therefore precluded from making any disclosures with respect to these matters.

Should you be requested to comment on any of your legal assignments in this regard, we instruct you to invoke the attorney-client privilege rather than respond.

[The document referred to was marked exhibit No. 106.*]

Senator WEICKER. Now, this was Mr. Kalmbach's draft which obviously you read and sent on to Mr. Dean for his comments and/or revision. This was October 2, 1972, when in effect an attorney-client privilege was trying to be set up in advance.

Would you like to explain to this committee as to whether or not, No. 1, this didn't arouse any suspicions on your part and why it is that we have to set up attorney-client privileges, attorney-client relationships in order to assert the attorney-client privilege in advance?

Mr. EHRLICHMAN. Well, as you see from the covering memo, Senator, I am simply transmitting from Mr. Kalmbach to Mr. Dean a suggestion of Mr. Kalmbach. I don't relate it to any specific incidents or projects at all. I can't—Mr. Kalmbach would come once ever couple of months and call on me and we would go down a list of items and this was one that I recall he left with me at such a meeting. He said that he was concerned about sort of the informality of his arrangement and he wasn't vouching for it being a terribly good idea. As you see by the covering memo, I wasn't at all sure whether it was advisable and I referred it to John Dean. I am not sure what ever became of this, whether there was any action taken on it or not.

Senator WEICKER. Well, all you say is whether it is advisable is the first hurdle.

Mr. EHRLICHMAN. Right.

Senator WEICKER. Inadvisable to talk to him, correct, otherwise you would work on a revision?

Mr. EHRLICHMAN. I have no—at the time I had no feel for whether this was a good idea or not.

Senator WEICKER. In other words, you felt this was merely an attempt of Mr. Kalmbach to formalize his relationships with the White House?

Mr. EHRLICHMAN. That was my assumption, yes. I think that, if you take it on its four corners that is what his handwritten draft says, and I was in no position to judge as to whether that was or was not appropriate under the circumstances.

*See p. 3005.

Senator WEICKER. Well, the whole thrust of his memorandum is to set up this relationship in order he does not have to make any disclosures; is that correct?

Mr. EHRLICHMAN. Well, as I say, I think——

Senator WEICKER. It had nothing to do with employment?

Mr. EHRLICHMAN. The basic question so far as I was concerned here, was not whether there was a relationship or not but whether this was an advisable thing for the White House to be doing with an attorney on the outside.

Senator WEICKER. But it is your statement, this is your interpretation of Herb Kalmbach's thinking ahead of the matter of privilege being raised sometime on the matter, this is what you are saying to John Dean?

Mr. EHRLICHMAN. Right.

Senator WEICKER. Why would he be thinking ahead?

Mr. EHRLICHMAN. Obviously. I am not in a position at this time, at the time I wrote this, to know what his thought was, as I said. That is something that I asked Dean to get into with Kalmbach direct. I took myself out of it.

Senator WEICKER. And it did not, in conjunction with other matters that you had discussed with Mr. Kalmbach, it has no relationship at all, it is just a matter of formalizing his employment status at the White House?

Mr. EHRLICHMAN. Well, it may have been in connection with something that we discussed but I would not know.

Senator WEICKER. I have no further questions at this time, Mr. Chairman.

Senator ERVIN. It could be——

Mr. EHRLICHMAN. Mr. Chairman, counsel brings to my attention an omission. Senator Montoya asked me a question about Clark MacGregor, and his response to my testimony. There is in the committee staff's possession a dictabelt recording of the conversation which Mr. MacGregor and I had which bears on this point and I would ask that that transcription simply be made a part of the record.

Senator ERVIN. Now, the evidence before this committee is that the only thing Mr. Kalmbach had done in connection with these matters was that he had raised money and had the money transferred through Ulasewicz to the defendants and their counsel in the criminal action, and that he had disbursed money to Segretti.

Aren't these documents that Senator Weicker called your attention to susceptible of the interpretation that it was an effort to cloak him with a suspicious pretense of having acted in the capacity of counsel so he might invoke the attorney and client privilege?

Mr. EHRLICHMAN. Senator, I think—the first part of your statement is exactly correct, you are operating on very limited knowledge based on the little bit of evidence that I had here about what Mr. Kalmbach did. He did a great many other things some of which he did for the White House. Now, I do not conceive that money-raising effort to be for the White House, and this attorney-client privilege statement, this retainer statement attempts to identify his relationship to the White House, not to the Committee To Re-Elect. So I think just the opposite would be true in that this would relate to some of those things

which he had done in connection with the San Clemente property or something that was germane to a legitimate White House activity.

Senator ERVIN. There would not have been any necessity for writing out a document to that effect.

Mr. EHRLICHMAN. Well, I would hope——

Senator ERVIN. With respect to anything he did as a private attorney for the President, I never have heard any evidence or heard it suggested that he was ever attorney for the White House. I thought he was a personal attorney to the President.

Mr. EHRLICHMAN. Well, I hope you will take the opportunity to take that evidence so that you would have this in proper context.

Senator ERVIN. Well, in the interest of time, I will—if there is no objection on the part of any Senator—I will have these two documents put in the record and marked as exhibits regardless of what the explanation was.

Mr. EHRLICHMAN. Mr. Chairman, may I ask this other document, the telephone transcript, the conversation between Mr. MacGregor and me be put into the record?

Senator ERVIN. Without objection, so ordered.

Mr. EHRLICHMAN. Thank you.

[The document referred to was marked exhibit No. 107.*]

Senator ERVIN. I have no further questions.

Senator Baker.

Senator BAKER. I have no further questions.

Senator ERVIN. Senator Inouye? Senator Gurney? Senator Montoya? Senator Weicker?

If there are no further questions of Senators, then under our procedures we will turn to counsel.

Mr. DASH. Mr. Ehrlichman, I am going to move on very quickly to the main area of our inquiry, which is the Watergate and the coverup. But I will just ask a couple of questions to get back to the Ellsberg break-in, and not into the break-in itself and not get into the legal questions of the legality of the break-in itself, but the sincerity of your statement that you felt it was legal.

Now, the first question that I have to ask in that area—is it not a fact, Mr. Ehrlichman, that this is the first time you have asserted publicly before any investigating body the claim that the break-in of Dr. Fielding's office was legal for national security?

Mr. EHRLICHMAN. Well, I think unlike the other investigative bodies this one goes far beyond mere fact and gets into these associated questions. The other investigative bodies, as you call them, have been basically grand juries, where we have not gotten into questions of law nor for that matter, the surrounding and sort of collateral questions. So that I have never been called upon, I do not think, to in any way treat of that subject on any previous occasion.

Mr. DASH. But you have spoken publicly on this subject, have you not, on this so-called Ellsberg break-in?

Mr. EHRLICHMAN. Well, I do not know what you call speaking publicly. I have talked to the press.

Mr. DASH. And you also appeared on Mike Wallace's program "60 Minutes."

*See p. 3007.

Mr. EHRLICHMAN. Yes, I did.

Mr. DASH. Do you recall in that interview your statement that there was no way to condone that action? Now, if in fact you believed that, at that time, that it was legal, and had, as your attorney indicated, the section of the Code which gave symbolic basis for the legality, would you be saying there was no way to condone it?

Mr. EHRLICHMAN. Well, I think you will remember my testifying here, Mr. Dash, that at the time it was reported to me I did not condone it. It was simply beyond my contemplation that there would be a resort to that particular—to the break-in in order to do this job that they were assigned to do, this investigation.

Mr. DASH. But you have testified and spent quite a bit of your time testifying, in answer to questions, that the break-in was actually a legal act in the interest of national security. Then taking your statement that you did not know in advance that is what they would do, nevertheless, you indicated that that was perfectly legal under the law in the interest of national security.

Mr. EHRLICHMAN. I believe that is a sound position.

Mr. DASH. Now, did you also testify that you spoke to the President in March about it and that he also indicated to you that he believed that national security required it or that it was justified under national security?

Mr. EHRLICHMAN. Yes, he did.

Mr. DASH. If he did that in March—you are aware of his May 22 statement. Why would it be necessary for the President in his May 22 statement to make a public apology actually, and take personal responsibility for what he said was illegal means that he was not made aware of in advance? Rather, would he not have stated, as President, if he thought that this was a legal act and in the interest of national security, that all acts of the Plumbers group were legal, and in the interest of national security? Why would he feel it necessary to apologize to the people of America and take responsibility and say he had no foreknowledge of any legal means?

Mr. EHRLICHMAN. Well, you are asking the wrong person, Mr. Dash, to explain the President's statement of May 22. I was gone like 3 weeks at that point, and had no part in the preparation of that statement.

Mr. DASH. Well——

Mr. EHRLICHMAN. My statement here with regard to my understanding of the law is not meant to speak for the President nor anyone except myself. This is my view based on the advice of eminent counsel, and I think it is a sound one.

Mr. DASH. When did you first get that view—you said, based on the advice of eminent counsel? Is it not true that you have recently been advised by counsel based on the statutes provided for you that this was a legal act?

Mr. EHRLICHMAN. Well, certainly.

Mr. DASH. And that, therefore——

Mr. EHRLICHMAN. I had no occasion to brief it until I left the White House, Mr. Dash.

Mr. DASH. Then you never really believed at the time or had any viewpoint when the break-in took place that this was legal?

Mr. EHRLICHMAN [conferring with counsel]. Well, I certainly had a viewpoint, and I certainly had a strong feeling of the propriety of the President's actions in attempting to plug these leaks.

Mr. DASH. That is not my question.

Mr. EHRLICHMAN. Yes, it is.

Mr. DASH. Mr. Ehrlichman, that is not the question, the question is the break-in.

Mr. EHRLICHMAN. Mr. Dash, are you going to interrupt my answers?

Mr. DASH. No, and you have used the questioning for making speeches throughout the hearing.

Mr. EHRLICHMAN. Let me give my answer and if you do not feel it is responsive why don't you point out where it is not?

Mr. DASH. I hope you will give a responsive answer.

Mr. EHRLICHMAN. I will do my very best. I understand your question to be whether or not I had a belief or impression that the thing that the President had assigned here in creating this special unit was legal and proper, and my answer to you is that I had a continuing impression that the charge given to Mr. Krogh on July 24 was in all respects within the President's constitutional prerogatives. I had then a present impression that this was well within the President's national security powers, and that has continued to be my impression forward.

Now, since I left the White House and have retained counsel, obviously, they have done some intensive briefing on the subject and you have seen the fruits of that in the colloquy between the chairman and Mr. Wilson. It is a much more refined and precise and substantiated position on the law than I had any occasion to make prior to this time.

Mr. DASH. I will not at this point want to retrace the legal arguments because that is not the issue I am questioning on.

Is it also true that you were totally ignorant, Mr. Ehrlichman, of the fact that actually the President and Mr. Haldeman had been informed that surreptitious entries or break-ins for national security purposes were clearly illegal and constituted the crime of burglary prior to that break-in? Were you ever aware of that?

Mr. EHRLICHMAN. Well, if you are speaking of the Huston, the Tom Huston memos, of course, the subject there was an entirely different subject, and that was domestic intelligence, domestic security. Here you are dealing in the area of foreign intelligence and national security and it is quite another subject.

Mr. DASH. Have you reviewed that document, Mr. Ehrlichman?

Mr. EHRLICHMAN. No.

Mr. DASH. Well, Mr. Ehrlichman, the document deals both with national security and with internal security and when that document was presented by this committee here in testimony, the chairman, with the support of the committee, excised out those areas of national security. But it dealt with a total plan of dealing with intelligence gathering both involving foreign countries and national security as well as internal security, and let me read to you—

Mr. EHRLICHMAN. What is the document, Mr. Dash?

Mr. DASH. The document is the so-called Huston plan, and we have it here with Mr. Murphy, who has been in custody of the plan and we can show you the part that has been put into the record has excised out the national security parts.

Senator BAKER. Mr. Chairman, before we go on, just to make sure that the witness, who I understand has testified that he had not seen the document, so the witness is familiar with it, why don't we supply him with either the original copy which Mr. Murphy has here or other copies?

Mr. DASH. I can supply him with the copy which appeared in the New York Times; it has been compared by Mr. Murphy with the original and it is accurate with the original but we can also show him the one Mr. Murphy has.

Mr. EHRLICHMAN. Well, to shorten this up, Counsel, I am not aware that I ever saw——

Senator ERVIN. Just 1 minute. I think Mr. Murphy can show you the original. I think it would be better than the other one.

Mr. EHRLICHMAN. Is it a question whether I am familiar with this document?

Mr. DASH. No, no. I asked whether or not you were aware whether the President and Mr. Haldeman had been ever informed prior to this break-in, that such break-ins for national security were, in fact, clearly illegal and constitute the crime of burglary. Mr. Murphy can show you at least that section I am talking about.

[Witness confers with Mr. Murphy.]

Mr. DASH. Yes, of course, counsel can see it.

Mr. WILSON. I should assume so. What are all these pasted pieces here?

Mr. DASH. The pasted pieces, Mr. Wilson, were pasted on to cover up areas which the committee believed involved national security.

Mr. WILSON. Well, I don't want anything handed up here which has expurgated portions of it.

Mr. DASH. Underneath is the actual document.

Senator ERVIN. Well, the committee excised those in the interest of national security. [Laughter.]

Mr. DASH. But they deal with national security and I am going to read a statement in this report which refers both to national security involving foreign powers and internal security which was the rationale of the persons who prepared this statement.

Mr. WILSON. Are you going to leave out any part of that document, Mr. Dash?

Mr. DASH. No, I am reading right from the document now.

Mr. EHRLICHMAN. Whereabouts?

Mr. WILSON. The one Mr. Murphy just showed me?

Mr. DASH. Yes.

Mr. WILSON. Verbatim and complete.

Senator ERVIN. No, sir, we are not. These documents related to both the methods to be applied in gathering international intelligence and domestic intelligence—the same thing. We left it out at the instance of the security agents of this country, and because of our own conviction that we did not want to expose methods of obtaining international intelligence, we excised that.

Mr. DASH. Mr. Wilson, the content, and I think in the interest of national security, the content of what the document says about national security is not relevant to the question I am putting to Mr. Ehrlichman. The fact that it dealt with national security and involving foreign powers is relevant, and I want to read the statement that was given to all of the parties who were planning this, and ultimately presented to the President of the United States, and I quote: "Use of this technique"—meaning surreptitious entry and breaking in, either for national security or internal security purposes—"is clearly illegal. It amounts to burglary."

Mr. WILSON. Mr. Chairman, wait, Mr. Chairman, I object to reading portions of this document. I ask for the time it takes for me to read verbatim everything that Mr. Murphy holds in his hand before this examination continues.

Senator ERVIN. Well, your motion is denied. This committee has some regard for preserving the information that relates to the methods of gathering international intelligence.

Mr. WILSON. Mr. Chairman, Mr. Dash has just given his own—

Senator ERVIN. Mr. Wilson, your motion is overruled by the committee unless somebody objects.

Mr. WILSON. But I have a new motion and that Mr. Dash is paraphrasing this document.

Mr. DASH. I am not.

Mr. EHRLICHMAN. You just did.

Mr. DASH. I am not paraphrasing, I am saying, and I think the committee found, by the very fact that it excised out portions, that this provision that I am now reading dealt with both national security and international security. But I am not referring to the specific items of national security for the reason the committee excised it.

Mr. EHRLICHMAN. Well, Mr. Dash, I just looked at what you intend to paraphrase, then I must strongly disagree with your description.

Senator ERVIN. The Chair will have to say the chairman is quite familiar with these documents, and the Chair is not going to divulge anything about the methods by which our very security agencies collect foreign intelligence, and they were excised from the thing at the unanimous consent of the committee.

Mr. DASH. At the advice, by the way, of the various security agencies which reported to this committee that they dealt with national security.

Mr. EHRLICHMAN. I don't quarrel with their advice. I quarrel with your paraphrasing, Mr. Dash.

Senator BAKER. Mr. Chairman, could I say a word at this point? I understand the point Mr. Wilson makes to be that he wants to see the document that is the source material from which questions are asked.

Would it be helpful to have a clean expurgated copy of this document deleting those sections designated as national security interest supplied to you so that you can be interrogated on those portions?

Mr. WILSON. What concerns me, Mr. Vice Chairman, is that according to Mr. Ehrlichman's last answer, the paraphrase which Mr. Dash gave just now does not fit the text.

Senator WEICKER. Why don't we go back one step, and not paraphrase, and I don't want to get into the argument whether you were or weren't but why doesn't somebody pick up that document and read it and then ask the questions?

Mr. EHRLICHMAN. Well, I may be able to shorten this up, Mr. Vice Chairman. Apparently what Mr. Dash is doing here is charging me with somebody's opinion in this document without having first laid the foundation that I have ever seen the document before or participated in the promulgation of the opinion, and——

Mr. DASH. Mr. Ehrlichman, I asked you a question.

Mr. WILSON. Let the witness answer the question.

Mr. DASH. Mr. Wilson, please.

Mr. THOMPSON. Excuse me, Mr. Chairman, as I understood it when the gavel was used just then Mr. Ehrlichman was in the middle of an answer, I do think it's unfair——

Mr. DASH. No; it wasn't.

Mr. THOMPSON. Excuse me, Mr. Dash. We ought to let the witness answer the question and then if it's inappropriate and unresponsive——

Mr. DASH. Mr. Thompson, I don't want to get into a debate with you. So far we have not heard answers but all we have had are speeches.

Mr. THOMPSON. That is your conclusion.

Mr. DASH. I want an answer and I don't want counsel to interfere with the answer.

Senator ERVIN. Wait a minute. I think the Chair can clean up all of this controversy, and we will get along a little faster.

The Chair has read all of the documents referred to. The documents cover the fields of foreign intelligence and domestic intelligence, and without disclosing anything they apply the same certain principles to both. We excised the references to foreign intelligence in the interest of national security at the request of various intelligence gathering parties, and the documents relating to both—the same thing—recommend the present restrictions should be modified to permit the use of this technique, that is: surreptitious entry. "The use of this technique," the document states, "is clearly illegal. It amounts to burglary. It is also highly risky and could result in great embarrassment if exposed. However, it is also the most fruitful tool and can produce the type of intelligence which cannot be obtained in any other fashion."

Now that is what it shows.

Mr. DASH. The question Mr. Ehrlichman was not that I was charging you with knowledge of this nor charging you with the reasoning behind this. I merely asked you the question, "Were you aware that the President of the United States had been informed of this plan, that this technique was clearly illegal and amounted to burglary?" That was the simple question I asked and again you jumped ahead and stated that I charged you with a particular thing.

Mr. EHRLICHMAN. I was not.

Mr. DASH. Were you aware?

Mr. EHRLICHMAN. No, sir.

Mr. DASH. Now I take it also that when such plans are made, and these were made through an interagency group involving the CIA, the FBI, and other security groups that are ultimately remembered

for the action of the President of the United States, that such plans are carefully researched and evaluated. Would that be a fair assumption?

Senator BAKER. Mr. Chairman, that is not the way we are going to conserve time. I think what we are going through now is evidence that this committee is in fact tired. But that is—the question of whether it's evidence or not is something that we will pass on, and I frankly am not interested in what this witness thinks about whether it is or is not evidence. I am interested in what he knows or doesn't know. I respectfully recommend that we move on to hard evidence.

Senator ERVIN. The witness has stated that he knew nothing about these documents, and the documents are in evidence and the committee can draw such conclusions from the documents. I don't believe that the witness ought to be compelled to testify about matters that he said he knew nothing about.

Mr. DASH. But you did testify, Mr. Ehrlichman, that in March of this year you spoke to the President and discussed this particular entry and he said that he knew that it was legal and justified for national security. Did he mention to you that he had received any kind of a contrary advice at any other time?

Mr. EHRLICHMAN. Well now, that question makes an assumption not in evidence, Mr. Dash, that the President said he knew it was legal. I don't believe I have ever testified to that. Maybe some other witness has, but I don't know where you got that idea. I could not answer the question with that assumption in it.

Mr. DASH. I thought that was your testimony. I asked you the question earlier whether or not in March you talked to the President and the President said that he believed it was legal and justified for national security and I thought you answered in the affirmative.

Mr. EHRLICHMAN. Well, I certainly would not want to give you the impression that the President had given me a legal opinion on this at that time. But what the President said was that he felt that it was important, and it was necessary, that in the context of the massive thefts, the turnover to the Russian Embassy and all the context of that operation that he certainly could not criticize the men who had undertaken this in good faith believing that they were responding to the urgency of the circumstances.

Mr. DASH. All right. The testimony you do leave with the committee is that your own personal evaluation as to its legality was a recent one after advice of counsel?

Mr. EHRLICHMAN. Well, I certainly would not want to leave that impression either, Mr. Dash, and I would simply stand on my actual answers.

Mr. DASH. Well, the record will so show.

Now, you testified that you met and in effect your log shows that you met twice with Mr. Dean on June 19, 1972, which was 2 days after the break-in at the Watergate, once at noon, alone, and again at 4 p.m. with Mr. Clawson, Mr. Colson, and Mr. Kehrli. Now at the noon meeting with Mr. Dean, can you give us your recollection as to what that meeting was about and whether you were discussing the Watergate break-in?

Mr. EHRLICHMAN. Yes; I believe we were, and I believe that it was basically to determine between us the inquiries which I felt he ought to make in order to try to determine what had taken place.

Mr. DASH. Did he not at that time report to you that he had spoken to Mr. Liddy?

Mr. EHRLICHMAN. No, I don't believe so.

Mr. DASH. He made no report at that time to you as to any of the investigations he had made during the day of the 19th?

Mr. EHRLICHMAN. I have the impression that Mr. Dean hadn't been at work very long at that time, and that he was just getting started.

Mr. DASH. All right.

Now, at 4 p.m., what was the purpose of the meeting with Mr. Dean, Mr. Clawson, Mr. Colson, and Mr. Kehrli?

Mr. EHRLICHMAN. The principal purpose, as I recall, was to be in a position to answer inquiries which, I guess, Mr. Clawson was getting or the press people were getting, about Hunt's White House status, of whether he was still an employee of the White House, if not when he had terminated and under what circumstances, and so forth.

Mr. DASH. And isn't that when Mr. Kehrli was brought up to check the record? Would Mr. Kehrli have the record of that?

Mr. EHRLICHMAN. Mr. Kehrli was the staff secretary and would have to be involved in any discussion of that kind. There was another subject or two discussed at the time but as I recall, that was the precipitating question.

Mr. DASH. Well, aside from Mr. Hunt on the payroll, wasn't the focus at that meeting on the question of Hunt himself? Hunt's status at the White House and also the question that Mr. Hunt had a safe in the White House and that the safe ought to be opened?

Wasn't that part of the discussion?

Mr. EHRLICHMAN. Yes, it was, as I previously testified.

Mr. DASH. Yes.

And actually that safe was opened at that time on the evening of the 19th?

Mr. EHRLICHMAN. I don't know. I think it must have been either that evening or the next morning.

Mr. DASH. Now, what was the concern and who brought up the concern of what the contents of Mr. Hunt's safe would show?

Mr. EHRLICHMAN. I don't recall, Mr. Dash. Somebody at the meeting.

I think the way it came up was not so much a personal concern as it was an inquiry by the investigation—either the Metropolitan Police and/or the FBI, as to whether Hunt had any belongings in the White House.

Mr. DASH. Now, on June 20, 1972, you met at 9 o'clock with Mr. Haldeman and Mr. Mitchell joined by Mr. Dean at 9:45, joined by Attorney General Kleindienst at 9:55, and then at 10:30 you had a meeting with the President.

Was that also a followup to find out what was going on in terms of Watergate?

Mr. EHRLICHMAN. I think this was the process of trying to get everybody together who might know anything, to try and get a picture of what the investigation was going to be, whether there might be other people involved, just what the—to try and get the campaign director and the head of the Department of Justice and everybody together in one place to ask questions.

Mr. DASH. Now, by that time Mr. Dean had testified that he interviewed Magruder, Liddy, and he also testified that he told you about Liddy's activity, about the fact that Liddy had stated that Magruder had pushed him into the break-in and he also testified that he briefed you on the earlier meeting in Mr. Mitchell's office on January 27 and February 4, 1972.

Did Mr. Dean give you all of that information at that time?

Mr. EHRLICHMAN. No, he did not give me all of that information. He gave me some of it.

Mr. DASH. What part of it do you acknowledge that he gave you?

Mr. EHRLICHMAN. By the time he came in at 9:45 that morning or at what time?

Mr. DASH. During that meeting.

Mr. EHRLICHMAN. Oh, during that meeting. I don't believe that Mr. Dean contributed very much affirmative information at that meeting. I think that meeting was more for the purpose of hearing from Mr. Mitchell and Mr. Kleindienst, what the progress of the investigation was and that was known at the time. My impression is that Mr. Dean told me about his conversation—part of his conversation with Mr. Liddy at some other time.

Mr. DASH. Do you know when?

Mr. EHRLICHMAN. No, I don't, but the best recollection I have is that it was at some time more remote to his conversation with Liddy than this if in fact it occurred when you say it did.

Mr. DASH. Now, the meeting at 10:30 that you had with the President, did you report to the President what you had learned from the parties who attended the earlier meeting?

Mr. EHRLICHMAN. I told Senator Baker, I believe, the other day that Watergate was not discussed at that meeting and since then I have rechecked what sketchy notes I have and I find I was in error on that. I am sure there must have been some discussion of the Watergate with the President on that occasion on the 20th.

There were three principal subjects covered at that meeting. One of them was Government wiretapping and it is obvious to me that there must have been some Watergate discussion that led into this discussion in which I took an assignment from him to get some statistics for him about the incidents of Federal wiretapping in domestic-foreign situations, that is, situations involving U.S. citizens and foreign governments which was a statistic he did not have and which he wanted.

Now, I am surmising and reconstructing because I have no direct notes on this, but I am just—I am just certain that we did discuss Watergate at the outset of that meeting.

Mr. DASH. Well, now, on the 23d there is no indication that you met with the President between June 20 and 23.

Mr. EHRLICHMAN. Yes. I met with the President in the company of others on the 21st at 12:38 and at 5:20 on the 22d.

Mr. DASH. Did you meet with him long on the 22d?

Mr. EHRLICHMAN. No.

Mr. DASH. I mean by yourself.

Mr. EHRLICHMAN. I see.

Mr. DASH. And the reason I ask that is that on the 23d you did have your meeting with Mr. Haldeman and Mr. Helms and Mr. Walters and

since the President, in his May 22 speech specifically says he told both you and Mr. Haldeman that he was concerned about the CIA problems and asked you to see to it that the investigation did not uncover these things, on the 20th when you met with the President, did the President give you such instructions or raise these questions with you?

Mr. EHRLICHMAN. No. Those instructions came through Mr. Haldeman and were given to me I think the morning of the day of the meeting which would have been the 23d.

Mr. DASH. So actually the President's statement on May 22 that he instructed Mr. Ehrlichman and Mr. Haldeman, really should have been, he instructed Mr. Haldeman?

Mr. EHRLICHMAN. Well, no, because he instructed me to attend the meeting but he instructed me through Mr. Haldeman and a great many of my requests from the President would come either from the staff secretary or from Mr. Haldeman or possibly someone else. It was not always face to face.

Mr. DASH. Now, Mr. Hunt's safe was opened on the evening of June 19 according to the testimony received and Mr. Dean met with you on June 21. Mr. Dean has testified that prior to that meeting he had examined the contents of the safe which were placed in his office and at this time, did he inform you of the contents of the safe on the 21st?

Mr. EHRLICHMAN. Well, your question, of course, assumes that Mr. Dean knew the contents of the safe. I have heard him testify both ways. Maybe I am wrong, but I thought his testimony was that he did not know the contents of the safe, but that Mr. Fielding had inspected the contents of the safe.

I recall only one conversation with Mr. Dean about the contents of the safe in any sort of descriptive terms and I am sorry I cannot tell you whether it was on that occasion or the following week, but what he described for me was simply that there had been papers, a gun, some electronic equipment of some kind which I have heard described variously as a tape recorder and other kinds of electronic equipment, and that he reported to me that Fielding felt that some of the papers were very politically sensitive.

Now, that was the full report, and when he gave that to me, whether it was the end of the week of the 19th or some time at the beginning of the week of the 26th, I am not able to tell you.

Mr. DASH. Did he not, when he reported to you about the contents of the safe, indicate it also included a forged cable involving President Kennedy and the so-called Diem assassination?

Mr. EHRLICHMAN. No; he did not.

Mr. DASH. Now, Mr. Dean has testified, and whether it was on this day when he reported to you on the contents or at a later day, that when he told you about the contents with regard to the briefcase, which apparently had some electronic equipment in it, that you said or told him to deep-six the contents.

Now, did you tell him to deep-six the contents when he gave you a description of the contents of the safe?

Mr. EHRLICHMAN. Well, I testified in response to Senator Gurney's question on that. In point of fact, Mr. Dash, what Mr. Dean testified to here, you are confusing one of his—one of his press leaks with his testimony, I think. He testified here that I told him to get rid of the briefcase, not the contents.

You probably read in one of the news magazines the other version, but the fact is that I never gave him any suggestion or direction to do either one.

Mr. DASH. I think Mr. Dean did testify to deep-six the briefcase and certainly not take the contents out before he deep-sixed it. But you say you never gave him that instruction?

Mr. EHRLICHMAN. No, sir.

Mr. DASH. Do you use the term deep-six?

Mr. EHRLICHMAN. Do I use it?

Mr. DASH. Yes.

Mr. EHRLICHMAN. Well, I used it quite a bit since it was suggested to me.

Mr. DASH. Prior to that?

Mr. EHRLICHMAN. Prior to that I do not think that was a familiar part of my lexicon.

Mr. DASH. Apparently Dean did not seem to understand either what you meant and when asked, is it his testimony that you mentioned the fact he goes over the bridge and he could drop it into the water. Do you recall that testimony?

Mr. EHRLICHMAN. No. I recall some testimony—oh, do I recall the testimony?

Mr. DASH. Yes.

Mr. EHRLICHMAN. Yes. I recall hearing him say that here.

Mr. DASH. And do you recall having told him that?

Mr. EHRLICHMAN. No; I did not tell him that. I do recall a conversation with Mr. Dean about the river because just at this time Mr. Dean's house was in the process of being flooded by the Potomac, and we had quite a bit of discussion about the fact that he was away from work several days, sandbagging his house and moving the furniture, and so on, and we were discussing that in the context of his having held this material from the FBI for what he was concerned might be considered to be an inordinate period of time.

Mr. DASH. And so he may have gotten mixed up in your question about the house and the river—

[Laughter.]

Mr. EHRLICHMAN. No.

Mr. DASH [continuing]. With the contents?

Mr. EHRLICHMAN. No. I do not think that Mr. Dean is at all mixed up. I think he knows exactly what he is trying to do.

Mr. DASH. He is trying to testify.

Now, Mr. Fielding testified in the depositions in the Democratic National Committee suit on May 15, 1973. It was Mr. Dean's testimony before this committee that after he alleged—

Mr. EHRLICHMAN. Mr. Fielding testified that it was Mr. Dean's testimony?

Mr. DASH. No, no. I have not finished my question, please.

Mr. EHRLICHMAN. Well, I am already mixed up. Could we start over?

Mr. DASH. Yes. Mr. Dean testified after you had instructed him to deep-six or drop the briefcase in the water, that he went to see Mr. Fielding and reported back to Mr. Fielding that that was the instruction they were concerned about, primarily because too many people had actually seen what had come out of the safe.

Now, Mr. Fielding has given his deposition in the Democratic National Committee suit on May 15, 1973, and let me read you what Mr. Fielding states in that deposition.

In a question concerning the conversation he had with Mr. Dean, his answer was:

I would say it was closer to the 20th than the 27th. I am afraid I cannot really pinpoint it much more than that. In the course of the conversations that we had, John indicated that there was a lot of concern about this material and we had a discussion about it. I would have said this is not a quote, that it would be unfortunate if some of this stuff leaked out or is revealed to the press. By the same token, it all has to be turned over. It is all evidence, even though obviously, some of it is totally unrelated to the break-in. In the context of that kind of conversation, Mr. Dean indicated to me that Mr. Ehrlichman had suggested to him this was in the context of a conversation about a briefcase, that he deep-six the briefcase.

Now, this is Mr. Fielding's deposition recalling what Mr. Dean told him.

Now, I just raise that to you on the basis that Mr. Dean testified that he had gone back to tell Mr. Fielding that you had told him that and Mr. Fielding has so deposed that he has.

Mr. EHRLICHMAN. Well, Mr. Dash, it is perfectly silly to suggest that I would go to the elaborate lengths that I did in making sure that the Secret Service and Kehrli and the GSA and somebody from Dean's office was present at the opening of the safe and that I would give instructions for taking custody of the contents and then make a suggestion like that. I mean, I think you have to give me credit for understanding the importance of evidence in a case of this kind and I did understand that and on the 19th made darn sure that that evidence was preserved in a way that if there were a subsequent trial, the evidence could be identified and placed in evidence carefully.

Mr. DASH. It was Mr. Dean's testimony that he had to so instruct you that that was the problem, that so many people had seen it that it would be inadvisable to do it.

Mr. EHRLICHMAN. Well, why don't you ask Mr. Colson, Mr. Kehrli, and Mr. Clawson, who were also at that meeting, who it was that established the process by which the integrity of that evidence would be preserved, and then perhaps you will get some independent view of it.

Mr. DASH. Is it not true that you did seek to ask Mr. Clawson and Mr. Colson certainly by a telephone call concerning whether or not you had made such a statement to Mr. Dean? And you have copies—I am now referring to a transcript of a telephone call that you had with Mr. Clawson which your attorney has provided under subpoena to us. There is no date on this transcript.

Mr. EHRLICHMAN. There is a date on mine.

Mr. DASH. No date on mine. What date do you have?

Mr. EHRLICHMAN. April 17.

Mr. DASH. April 17 does appear on the Colson transcript. Now——

Mr. EHRLICHMAN. For some reason they excised the date from your copy.

Mr. DASH. Now, I will read this telephone conversation and ask that it be made part of the record. It is short and I can read it but I will refer primarily to where you were asking Mr. Clawson to recall being at a meeting and where the question of Hunt's safe had been discussed

and at which Mr. Kehrli and Mr. Colson and Mr. Dean were present.

Now, that meeting took place clearly on June 19.

Senator ERVIN. Without objection, it will be marked as an exhibit. [The document referred to was marked exhibit No. 108.*]

MR. DASH. It is interesting because he says he has a vague memory and he does not recall the details and you say at the bottom. [Reading:]

Well, it is interesting because Dean who as you know, has talked to the U.S. attorney at great length, cites some comments of mine in that meeting as evidence of corrupt attitude on my part and I'm looking for anybody who can help me to recall what took place there.

CLAWSON. That's a helluva note, John.

EHRLICHMAN. I agree.

CLAWSON. If you want me to be forthwith and straightforward with you, I'll recollect anything you want me to.

MR. EHRLICHMAN. Yes. That is what I testified to the other day.

MR. DASH. Mr. Ehrlichman says:

Well, no, let me, let me tell you what my problem is and then you can . . . I've got to tell what I recall and what I don't recall. He alleges that I said two things at that meeting. One, that we ought to deep six the contents of the safe, quote, unquote. And, two, that we ought to get Hunt to leave the country.

MR. EHRLICHMAN. Go on.

MR. DASH. I will read it.

Oh, I could . . . listen, John, if anything like that. If either one of those two things were said that would be vivid in my mind.

MR. EHRLICHMAN. I think the word is "recollection." Vivid in my what?

MR. DASH. "Vivid in my mind" is what I have here.

MR. EHRLICHMAN. That is funny. Mine says "recollection."

MR. DASH. I wonder why we have a different transcript. This is all we got from your attorney. We did not retype this.

Let me read on and see if we have any other differences.

MR. EHRLICHMAN. I would think so. I would think so.

CLAWSON. And that's objectively.

EHRLICHMAN. Now, in point of fact, Dean phoned Liddy and asked Liddy to have Hunt leave the country.

CLAWSON. That's new news to me.

EHRLICHMAN. Yeah, but you see this . . . and what he's doing is saying well, I was just being a good German and carrying out orders.

CLAWSON. No, I would have absolutely no trouble in remembering either one of those two things had that been said.

EHRLICHMAN. Well, OK.

CLAWSON. I would just remember that.

EHRLICHMAN. Yeah, that's a fairly dramatic event. OK, thank you very much. Awfully sorry to have bothered you. I just don't understand.

CLAWSON. If there's anything I can do in this thing, please let me . . .

EHRLICHMAN. I will. I will. Thank you, Ken.

All right. Now, why—if the only meeting that Mr. Clawson attended with you during that period of time was on June 19, during the day prior to the time the safe was opened—why would you be asking Mr. Clawson if he could recollect whether you had said anything to Mr. Dean about deep-sixing anything about the safe? It was obviously at the meeting on the 19th, when the safe was not yet open, such a conversation could have occurred then.

*See p. 3009.

Mr. EHRLICHMAN. Well, this was the version that was reported to the President as having taken place at this meeting on the 15th or 16th by Mr. Petersen who in turn was reporting what Dean was alleging to the U.S. attorneys, so the President confronted me with this and I said, "when was this supposed to have happened," and he said, "well, what they tell me is that it happened at this meeting where you all discussed Hunt and this safe and all this business." So that is why I focused on that meeting as the time that Dean alleged this was supposed to have happened. That is the best information I had at the time.

Mr. DASH. All right, but it is quite obvious that since the safe had not been opened yet, and taking what you say to be true, Dean certainly would not be claiming that you were telling him to deep-six something on that day.

Mr. EHRLICHMAN. Mr. Dash, Mr. Dean has had so many versions of these stories that I do not think you can assume that any one of these would be more reasonable than any other. I appreciate your situation vis-a-vis Mr. Dean and the committee, but I think you have to recognize that there are many, many versions of this story that have been floated to you and the prosecutor and all in the interests of immunity.

Mr. DASH. Mr. Dean has testified that whatever discussions took place about deep-six took place after the safe was open and, therefore—

Mr. EHRLICHMAN. Well, not—I submit—

Mr. DASH. He has testified to this under oath.

Mr. EHRLICHMAN. Well, here.

Mr. DASH. And, therefore, what I suggest to you is that Mr. Clawson would not be a person who might have recalled that even though you may have recalled that was the date that was relevant at the time.

Mr. EHRLICHMAN. If you accept that version at that time. Now, the thing that I said to you, Mr. Dash, was you get Mr. Clawson and ask him who it was that hedged the contents of this safe about with several witnesses and with a procedure to guarantee the integrity of the evidence in that safe and I think he will tell you that I was the one who insisted upon that procedure at the meeting on the 19th.

Mr. DASH. All right. You again called Mr. Colson on April 17 in which you made a similar inquiry—

Mr. EHRLICHMAN. Yes, sir.

Mr. DASH [continuing]. Concerning that.

Now, your conversation with Mr. Colson is you say, "Two quick questions", after the preliminary introduction when you said "hello." Senator BAKER. What are you reading from, Mr. Dash?

Mr. DASH. The transcript of April 17, conversation between Mr. Colson and Mr. Ehrlichman.

Senator ERVIN. Without objection, it will be marked as an exhibit. [The document referred to was marked exhibit No. 109.*]

Senator BAKER. Does the witness have a copy?

Mr. DASH. Yes.

Mr. EHRLICHMAN. I have a copy. I have found that the transcript of the other conversation I had did not jibe with Mr. Dash's.

Mr. DASH. When I was reading, were there any other items?

*See p. 3010.

Mr. EHRLICHMAN. I do not know, Mr. Dash. I was more interested in your assertion than anything else.

Mr. DASH. I was just reading. I was not inserting.

Mr. EHRLICHMAN. No. Assertions, not insertions.

Mr. DASH. I said I was reading, not asserting.

You say:

COLSON. Two quick questions.

I think it is the first time you get into the subject matter.

One thing I should tell you is that our great find last night really started accelerating. Something coming out this morning. Dean involved. Now I notice the LA Times has it this morning but the people that Shapiro has been getting information from, you know, the town is buzzing with, is alive with the story, so I don't think we have a helluva lot of time.

Can you tell us what that great find was last night that was coming up in the LA Times?

Mr. EHRLICHMAN. No, sir, I sure cannot.

Mr. DASH. All right. Mr. Colson says:

I just thought I would let you know that.

Mr. EHRLICHMAN. I appreciate it.

COLSON. Did he, when he went over there, was he given any immunity?

EHRLICHMAN. Not yet. What they've done, apparently——

COLSON. They shouldn't give it to him.

EHRLICHMAN. I know it. What they said to him is that unless he turns up corroborated evidence against Haldeman and me——

COLSON. Is that who he's trying to make?

EHRLICHMAN. Sure.

COLSON. Who, Dean is?

EHRLICHMAN. Yep.

COLSON. That's John Mitchell again.

I guess I'll read this——

Son of a bitch.

EHRLICHMAN. Unless he does that he doesn't get immunity. Now my grapevine tells me that you are going to be summoned over there today.

Who was the grapevine, by the way, Mr. Ehrlichman?

Mr. EHRLICHMAN. At that point in time I do not know. I do not know who that would have been.

Mr. DASH. Would it have been Mr. Petersen?

Mr. EHRLICHMAN. No. Mr. Petersen was not my source for anything at that time.

Mr. DASH. Mr. Colson says:

Oh, really?

And you say,

Yep. And that they're going to ask you about a meeting in my office which Dean has highlighted as the central gemstone——

Interesting term there. Any purpose for using it?——

in the case against me and so just in case you get hauled over there before 11 o'clock, maybe I'd better tell you about it. It was a meeting that Kehrli, Clawson, you, Dean and I had here.

COLSON. I wasn't there.

EHRLICHMAN. In my office.

COLSON. I was not there. Dean tried this one out on me Friday night, and I said the only thing I can ever recall, John, is I once told you I thought it was a stupid, god-damn thing for Hunt to be unavailable.

EHRLICHMAN. Well, that's the meeting where supposedly I ordered him to tell Hunt to leave the country.

COLSON. Never heard that. And I will so state under oath.

EHRlichman. Or that I admonished everyone that we ought to figure out some way to deep-six the contents of Hunt's safe.

COLSON. No. No way. I was the one who said go get Hunt's safe and be sure it's preserved for the FBI.

EHRlichman. Right.

COLSON. A, and I think A is the earlier answer, and B, it's stupid to get another country. But that was in my office, not yours. And you weren't present. I can handle that one easily.

EHRlichman. But you were not in a meeting here?

COLSON. Well, I may have been but I sure don't remember that.

EHRlichman. That's the way. OK.

COLSON. Alright? I can handle that.

EHRlichman. Thank you. I'll see you at 11.

COLSON. There's a couple of things you and I need to do to protect each other's flank here but we'll talk about that, but no, I'm serious.

EHRlichman. Fair enough.

COLSON. Let's get it clearly understood that son of a bitch doesn't get immunity. I want to nail him.

EHRlichman. Well, I'm doing my best.

COLSON. No. I want to nail him. I'll take immunity first.

EHRlichman—

[Laughter.]

Senator BAKER [now presiding]. Just a minute. Mr. Dash, if you will suspend for just a moment.

The chairman admonished me before he left to take care of other business to tell the audience and all those present that he is entirely serious about maintaining decorum in this hearing room. It is inappropriate for the audience to respond in any way to the statements made by the witness, by counsel, or to anything else. On the express and explicit instructions of the chairman I caution the audience that the committee will not permit demonstrations.

Mr. DASH. I think you say "OK." He says, "All right," and there is a thanks at the end.

Now, Mr. Colson in that discussion indicated to you that he did not recall being at least at the meeting with Mr. Clawson, Mr. Kehrli, you, and Mr. Dean. But it is true he recalls that a discussion concerning getting Hunt out of the country was in his office and you were not there. But again, Mr. Colson claiming not being present at the meeting or on the 19th. Could Mr. Colson in any way verify for you that you had not said to Mr. Dean to deep-six the contents?

Mr. EHRlichman. Well, I am satisfied. Mr. Colson was present. I have an office log system that logs people in and out of my door on an actuality basis, so to speak.

Only the people who actually go in and out are logged and they are logged at the time that they do go in and out. So, it would be—you know, there is always room for some error, but I think it a practical certainty that he was there in fact. And I was much more interested in whether or not he had any recollection of such a conversation.

I think there are two important things in that conversation, Mr. Dash, that you kind of skipped over. One was the fact that Mr. Dean tried this story out on Mr. Colson which goes to my answer to Senator Gurney the other day that at a point in time, right around this second or third week in April, Mr. Dean was very busily engaged in planting stories here and there as he attempted to plant this story with me that I supposedly ordered him to have Hunt leave the country.

The second thing is on the matter of immunity, I had been consistently taking the position since March 22, that no one in the White House should seek immunity in any form whatsoever, that it was extremely inimical to the interests of the President and the White House for someone in the White House staff to, in any way, seek to be excused for his actions under any circumstances. And my efforts—and I should have said this in response to Senator Gurney's question of a few minutes ago with respect to what we were talking about during the days April 15 to 30—one of the things that we were talking about was the public policy that might be involved in anyone in the White House seeking to be immunized from the consequences of his act as an inducement to testify, and I felt strongly then and I was continuing to feel strongly at this time that that was wholly an improper procedure.

Mr. DASH. I just have this followup on that, just one or two quick questions on the immunity.

Is it true, Mr. Ehrlichman, that you called Mr. Kleindienst sometime before April 14 and expressed the same view that nobody should be offered immunity?

Mr. EHRLICHMAN. Prior to April 14?

Mr. DASH. Prior to April 14, yes.

Mr. EHRLICHMAN. Well, I recall—I recall calling Mr. Kleindienst on about March 28, and inquiring of him about the procedures involved in securing immunity, and then at some point in time I conveyed to him the President's decision that no one in the White House should be extended immunity.

Mr. DASH. The question is whether you personally—

Mr. EHRLICHMAN. I conveyed?

Mr. DASH [continuing]. Urged not the President's position but you personally suggested to Mr. Kleindienst—

Mr. EHRLICHMAN. As a personal point of view?

Mr. DASH. Yes.

Mr. EHRLICHMAN. Well, it is not out of the question because I was strongly stating that point of view consistently through this period of time.

Mr. DASH. Right, and did you participate in the preparation of the President's statement of April 17?

Mr. EHRLICHMAN. Yes, I did.

Mr. DASH. In which he stated there was nobody in the White House that will be offered immunity in criminal investigations.

Mr. EHRLICHMAN. Yes, I did.

Mr. DASH. At this point, Mr. Chairman, as I see the time—but I have a number of other questions. I suggest it is time to recess.

Senator ERVIN. I would suggest we run 10 minutes more and recess at 12:30.

Mr. DASH. Now, Mr. Mitchell has testified that on June 21 he was debriefed by Mr. Mardian and Mr. LaRue on their talk with Mr. Liddy and that was the first time that he heard about Liddy's operations which he referred to—I mentioned earlier to you—what he called the White House horrors. They included the Ellsberg break-in, the Diem cable, the spiriting out of Dita Beard from town, and certain wiretapping activities. He listed a number which he called White House horrors and I had had them as so-called Liddy operations and

this is the first time that he learned about them. He said on the 21st—I know you have testified that maybe Mr. Mitchell's memory isn't correct, but are we really agreeing on the same thing? I think your testimony—when you referred to your diary and had certain meetings with various persons concerning the operation of the special investigative unit—at that time did you, when you had those meetings, discuss with them, especially Mr. Mitchell, the break-in of the Ellsberg psychiatrist's office?

Mr. EHRLICHMAN. That is a very complicated——

Mr. DASH. All right. Let me put it much more clearly. You have testified——

Mr. EHRLICHMAN. All right.

Mr. DASH [continuing]. That Mr. Mitchell's statement to us, that the first time he heard of the White House horrors and the Plumbers' activities involving Mr. Liddy, was the 21st, was in error because you had reported sometime earlier to Mr. Mitchell on this special investigative unit. Is that not correct?

Mr. EHRLICHMAN. Well, you see, we get into problems now, just for instance in that question. The first time I discussed the so-called Plumbers' activities and Mr. Liddy with Mr. Mitchell would be quite different than the first time I heard of or discussed these other things.

Mr. DASH. Right. That was the question I was trying to clarify because the question——

Mr. EHRLICHMAN. You see, what I testified to, in answer to a question, was that the existence of the special unit and its function, its purpose, as the President conceived it and the charter which he gave to Mr. Krogh on July 24, was discussed with several agency heads and Cabinet officers almost immediately thereafter.

Now, I don't think I was asked the question whether or not I ever discussed the Ellsberg break-in as such with Mr. Mitchell. I don't recall ever doing so.

Mr. DASH. Well, the question that came out was Mr. Mitchell's testimony that he learned of the Plumbers on the 21st when Mr. Mardian debriefed Mr. Liddy. He learned of Liddy's operations involving the break-in, the Diem cable, and the other things, and he said he first learned of that, what he called White House horrors, on June 21.

Now, on the next day, on June 22, you met with Mr. MacGregor, Mr. Colson, Mr. Mitchell at 9, and then you had a second meeting with Mr. Mitchell alone at 11:45. I know you have been asked about that meeting at 11:45, because apparently there was a phone call in between, and the question I put to you is whether or not Mr. Mitchell, at that meeting, told you about what he learned from Mr. Mardian. He has so testified that he did report to you what he heard, and he reported about the so-called White House horrors and talked to you about the need to keep the lid on to protect the election.

Mr. EHRLICHMAN. As I told Senator Gurney, I can't recall specifically the reason that Mr. Mitchell called or I called him. We got together at 11:45 on the 22d. I can say this, though, with great assurance; I never knew until the other day when it was testified to here, that Gordon Liddy had had some part in the Dita Beard business. I just never heard that from anyone. Nor had I heard about this cable until it was—whether discussed in the press as a leak from your staff or else

in the testimony here, one or the other, but contemporaneous with all of this. I was not aware of either of those events at all.

Mr. DASH. Mr. Mitchell never informed you of that.

Mr. EHRLICHMAN. No, sir.

Mr. DASH. By the way, if in fact Dita Beard had been spirited out through the help of Mr. Liddy or Mr. Hunt, and if in fact Mr. Liddy had something to do with the Diem cable forgery, and they were not Plumbers' work, who else had access to Mr. Hunt and Liddy's time and services while they worked for Mr. Krogh under you?

Mr. EHRLICHMAN. Well, of course, they ceased to work for Mr. Krogh under me on the special unit around September 20, and I don't know the dates of those events, but my hunch is that they were later than that, and I would just be speculating then. I don't have any idea.

Mr. DASH. Mr. Hunt still was working at the White House at that time, during these periods of time.

Mr. EHRLICHMAN. I can't tell you that of my own knowledge.

Mr. DASH. Do you recall when you were attempting on the 19th to fix a time when Hunt had left, what time you did fix?

Mr. EHRLICHMAN. No. As a matter of fact, on the 19th I don't think we fixed any time. There was still a lot of confusion and I think Mr. Kehrli was going to go back and check some records.

Mr. DASH. Now, despite your claim, Mr. Ehrlichman, that you had so many things to do that Watergate was really not central in your focus, you do seem to have been busy on Watergate matters since on the very next day, June 23, you and Mr. Haldeman met with Mr. Helms and General Walters and we have had—and I am not going over that testimony because I think it's been fairly clearly covered, but you did meet with Mr. Haldeman, Mr. Helms, and Mr. Walters, and the topic of the conversation there was the question of whether CIA involvement was involved, was that not so?

Mr. EHRLICHMAN. Mr. Dash, I would like to go back to the preamble to your question, because any answer that I might give might seem to adopt its assumptions. There isn't any dispute in the evidence that in the 12 days before I left Washington and went to California, that I had a number of meetings with regard to Watergate, both with Mr. Dean and on this occasion with Helms and Walters. I have never put a contention to the contrary.

But if you will look at my log, and you will look at the other record, you will see that once June 26 came and I left town, or whatever that date was, let's see, June 29 came and I left town, that my frequency of contact with this subject dropped off practically to zero. So I would not want the little lead in to your question to give anybody the false impression that you apparently have entertained.

Mr. DASH. Well, the impression at least I want to leave and you are leaving also, is that right after the break-in you were heavily involved?

Mr. EHRLICHMAN. I testified to that two or three times, and the reason that I was, I think you know.

Now, once we get to this Helms-Walters meeting, again I think you know that meeting was convened by the President because of a very strong concern he had about the jeopardy of the CIA's integrity, secrecy of its operations. And he wanted to be absolutely sure that this all-out FBI investigation could go forward without jeopardizing that secrecy.

Mr. DASH. You have characterized, at least so testified, concerning that it was a meeting at which you were making an inquiry as to whether or not there was CIA involvement and that actually Mr. Helms and Mr. Walters were going to make a check on that. As a matter of fact, Mr. Walters had testified, and Mr. Helms that they had already, especially Mr. Helms, had had a meeting the day before with the Acting FBI Director, Mr. Gray, in which he told them there was no CIA involvement and he was being ordered——

Mr. EHRLICHMAN. I hope you get a chance to ask him about that CIA letter of July 6 and why it was that it was not then for another 6 days until the CIA give firm assurance to the FBI that there was no CIA exposure.

Mr. DASH. Well, do you know, as a matter of fact, the reason for that is that after Mr.——

Mr. EHRLICHMAN. Are you going to testify now, Mr. Dash?

Mr. DASH. No. There is testimony which will come forward from Mr. Walters and that, as a matter of fact, based on your direction or Mr. Haldeman's direction, he did, in fact, go and tell Mr. Gray something different than what Mr. Helms had told him the day before.

Mr. EHRLICHMAN. You are confusing——

Senator BAKER [interrupting]. Just one minute, Mr. Ehrlichman.

Mr. EHRLICHMAN. You are confusing two things.

Senator BAKER. We are going to continue these hearings past August 3, it would appear and that is going to be over my firm objection and maybe even beyond the scope of my energy and resources. But we are not surely going to serve the purpose of trying to expedite this thing if we not only do not inquire of the witness about what he has testified to, or what other witnesses have, but what future witnesses may testify to.

I have not heard Walters' or Helms' testimony and if it is necessary to call this witness back and to ask him questions about the Helms and Walters testimony. I think we ought to do it. But just in the pure interest of time, Mr. Chairman, I would like to suggest that our inquiry, all of us, including me, that we limit our inquiry to what this witness has said or what other witnesses on this record have said on the same subject matter.

Mr. DASH. Mr. Chairman, I agree with that, of course, but it was this witness who has constantly referred in his testimony to Mr. Walters' July 6 statement, and it was in response to that this question was put.

Senator ERVIN. I would just suggest that counsel rephrase his question and ask the witness to testify what he said and what Mr. Walters said. I think that would be perfectly relevant.

Senator BAKER. I think that would be perfectly proper.

Mr. EHRLICHMAN. Mr. Chairman, I think just at the time Senator Baker spoke I was in the process of pointing out to counsel you have two different subjects, one is direct CIA involvement in the break-in, and the other is possible unrelated CIA activities which might be disclosed by a vigorous FBI investigation.

Now, I think you have to be very careful in defining what it was Director Helms and Mr. Gray discussed the previous day, and what it was we discussed at this meeting, and how the things narrowed down

at this meeting, and what it was General Walters was going to go and talk to Mr. Gray about.

Senator ERVIN. I think this may be an appropriate time to recess for lunch.

Mr. WILSON. Mr. Chairman, may I inquire about the schedule. Mr. Haldeman is our next witness and I would like to ask would you suggest that he be here at 2 o'clock? He has a statement which would take no longer than 2 hours to read and I would suggest that he read it the same day.

Senator ERVIN. I would suggest that he come in at 3 o'clock. I think we can finish with Mr. Ehrlichman at that time. I don't know whether we can or not.

[Whereupon at 12:30 p.m., the committee recessed to reconvene at 2 p.m. on the same day.]

AFTERNOON SESSION, MONDAY, JULY 30, 1973

Senator ERVIN. The committee will come to order.

Counsel will resume the interrogation of the witness.

Mr. DASH. Mr. Ehrlichman, following the meeting that you had on June 23 with Mr. Walters, Mr. Helms, and Mr. Haldeman, did you instruct Mr. Dean to contact Mr. Walters and follow up on the June 23 meeting?

Mr. EHRLICHMAN. No, sir. I simply notified Mr. Dean that there had been a meeting, that General Walters was going to be talking with Mr. Gray, and that we had indicated to General Walters that Mr. Dean would be his contact from that point forward.

Mr. DASH. Did there come a time when General Walters did call you and tell you that he was going to have a meeting or that Dean had contacted him and was it all right for him to speak to Mr. Dean?

Mr. EHRLICHMAN. It either happened that way or I told him at the time of the meeting on the 23d that Dean would be his contact, one or the other, but I am quite sure that I indicated to General Walters that Dean was the White House man who was looking after this whole subject.

Mr. DASH. Were you aware that Mr. Dean did in fact meet with General Walters on June 26?

Mr. EHRLICHMAN. No, I was not aware of those meetings.

Mr. DASH. There were a series of meetings?

Mr. EHRLICHMAN. Yes, I understand there were, and I was not aware of that series of meetings until just recently.

Mr. DASH. And Mr. Dean did not report to you on them?

Mr. EHRLICHMAN. No, he did not.

Mr. DASH. Now, on June 28, 1972, you met with Mr. Dean and Mr. Gray, and we have had some testimony on that, and on that same day you had two earlier meetings with Mr. Dean. Do you recall what the two earlier meetings were about before the meeting with Mr. Dean and Mr. Gray?

Mr. EHRLICHMAN. Not specifically. I surmised that one of them was simply an informational meeting knowing that I was about to leave town for an extended period of time. As I recall, there was a conversation and whether it was by meeting or whether it was by telephone, I cannot recall, but on the same day that we met with Pat Gray I am

quite sure we had a conversation about turning over the contents of Hunt's safe to Mr. Gray.

Mr. DASH. All right.

Then, you had your meeting with Mr. Gray and I think you have already testified to the circumstances under which a particular packet or envelope was turned over to Mr. Gray.

Mr. EHRLICHMAN. Right.

Mr. DASH. I think we have had full testimony on that.

Now, by the way, did you know at the time the packet of materials was turned over to Mr. Gray what was contained in the packet?

Mr. EHRLICHMAN. No.

Mr. DASH. Had you been told by Mr. Dean they were sensitive materials, politically sensitive materials?

Mr. EHRLICHMAN. Yes.

Mr. DASH. I think you testified in response to a question of Mr. Gurney on page 5438 of the testimony, Senator Gurney asked you: "Did you ever have any communication with Mr. Gray about these documents after this meeting?" and referring to the June 28 meeting and you answered, "Yes, sir." And Senator Gurney said, "And recount it to the committee," and your answer was:

That was in April of this year that we had a conversation. The President asked me to telephone Mr. Gray. It was a Sunday night and it was the 15th of April about 10:15 p.m. I was in the President's EOB office, and he had a meeting that day with Mr. Kliendienst. The subject of these documents came up at this meeting.

Then, you were asked to call Mr. Gray. You referred to that telephone call. You said:

I told him at that time that the delivery of the documents to him to Mr. Gray,

had been the subject of this conversation between the Attorney General and the President that Mr. Dean apparently had told the prosecuting attorney about the fact that he had made the delivery. Mr. Gray said, "Well, he cannot do that," and I said "well, he did say that," and he said "if he says that I will deny it," and I said "well, Pat, it isn't a subject for denial. Obviously, it is not something you can deny. I recall the episode very clearly," and well, he says "You have got to back me up on this," and he went on to say "I destroyed the documents."

I think at that point you said you were nonplussed about it and you hung up. Then you decided, after talking to the President, that perhaps you had not made it clear that you were not going to back him up and you called him back and without my reading the testimony, you made it very clear to him that if you had to go to testify you would tell the truth about that.

Now, is it not true, Mr. Ehrlichman, this was not the next time that you had a conversation with Mr. Gray about those documents? That at the April 15 meeting, did not Mr. Gray—

Mr. EHRLICHMAN [interrupting]. The next time—

Mr. DASH [interrupting]. The question put by Senator Gurney that after the June 28 meeting, did you have again occasion to talk about those documents with Mr. Gray, and your answer was—

Mr. EHRLICHMAN [interrupting]. I see.

Mr. DASH [continuing]. The April 15 phone call.

Mr. EHRLICHMAN. You are referring to the rather oblique reference in Mr. Gray's phone report to me about his confirmation hearings perhaps, and that is correct.

Mr. DASH. On March 7 and 8?

Mr. EHRLICHMAN. We discussed it in a much less specific way, in terms of what he was testifying to in the confirmation hearings, about whether he had delivered all—whether Dean had delivered all of the documents to the FBI in a package or in parcels.

Mr. DASH. Well, Mr. Ehrlichman, actually, although it was as you put it perhaps from a more oblique way but the conversation really was pretty much the same. Only this time Mr. Gray in his telephone call, and I am referring to the transcript of the telephone call that you had with Pat Gray on March 7 or 8, 1973, and that is the one that you testified at length with Senator Weicker about.

Mr. EHRLICHMAN. Yes.

Mr. DASH. And what I am referring to is that at this time wasn't the conversation somewhat different, and let me just read—Mr. Gray, toward the bottom of the first page of that transcript, says:

Another thing I want to talk to you about is that I am being pushed awfully hard in certain areas and I am not giving an inch and you know those areas that I think you have got to tell John Wesley to stand awfully tight in the saddle and be very careful about what he says, and to be absolutely certain that he knows in his own mind that he delivered everything he had to the FBI and don't make any distinction between but that he delivered everything he had to the FBI.

And you say "Right."

Then he says, "And that he delivered it to those agents, this is absolutely imperative," and you say, "All right." And he says, "You know I have got a couple of areas up there and I am hitting hard, I am just taking them on the attack," and you say "OK." "I wanted you to know that," and you say "Good, keep up the good work, my boy. Let me know if I can help," and he says, "All right, he can help by doing that," meaning, I take it, John Dean, and you say, "Good, I will do it."

At that time, in your telephone call with Mr. Gray when he suggests that to you, this is before Mr. Dean has gone to the U.S. attorney's office and made any statement that such a delivery was made to Mr. Gray.

You did not, then, tell Mr. Gray as you did when you were calling from the President's office, "That didn't just happen that way, Mr. Gray, I was there and I saw that it was delivered to you. It wasn't all turned over to the FBI," why didn't you tell him then instead of saying "OK," or "All right," why didn't you then catch him up there and say, "Well, the truth is, Pat, you did get them."

Mr. EHRLICHMAN. Well, the conversation with Gray, as I read it, that you have just quoted was Gray saying to me, "I am saying that the FBI got all these documents, which is true but I am not making any nice distinction about the fact that it came in two parcels." Now, I suppose that from a hindsight standpoint there was a hint there that he had some other problem with these documents but I didn't pick up that hint. I didn't understand what he was concerned about, and so I took it that what that was all about was simply Mr. Gray saying to me, that that is the matter in which he was testifying and that he certainly would not want Dean to volunteer anything that in any way would disrupt that testimony. It would keep integral, or protected the fact, that in fact that they had come to the FBI in two parcels instead of one parcel.

Mr. DASH. As a matter of fact, Mr. Ehrlichman, didn't you really pick it up and you didn't file it because you called Mr. Dean shortly

afterward, immediately following according to the transcript, and the conversation is as follows with Mr. Dean :

Mr. DEAN. Hello.

Mr. EHRLICHMAN. Hi. Just had a call from your favorite witness.

Mr. DEAN. Which is?

Mr. EHRLICHMAN. Patrick J. Gray.

Mr. DEAN. Oh, really.

Mr. EHRLICHMAN. And he says to make sure that old John W. Dean stays very, very firm and steady on his story and he delivered every document to the FBI and he doesn't start making nice distinctions between agents and directors.

Mr. Dean then says :

He is a little worried, isn't he?

And you say :

Well, he just doesn't want there to be any question.

He says :

He is hanging very firm and tough and there is a lot of problems around.

Mr. EHRLICHMAN. Probing around.

Mr. DASH. Probing around, excuse me.

Mr. EHRLICHMAN. That is just exactly what I said.

Mr. DASH. What you are doing is you actually carried out Mr. Gray's request. Far from telling Mr. Gray when he called you that as a matter of fact there were two deliveries, he did receive something personally as he was trying to tell you later in his discussion when you were calling from the President's Office, you did call Mr. Dean and you did carry that message to Mr. Dean, and you did tell Mr. Dean that Mr. Gray wants Mr. Dean to be sure to stand tight and make no distinction between FBI agents and directors, that all went to the FBI and, therefore, weren't you, in fact, participating in the covering up of that situation in which a packet was given to Pat Gray which later was destroyed?

Now, you didn't know it at that time?

Mr. EHRLICHMAN. Didn't know it?

Mr. DASH. You didn't know it at that time?

Mr. EHRLICHMAN. So far as I was concerned it was a perfectly proper way to go about delivering these documents to the FBI. Having the concern that we did that either the field office or the lower echelon of the FBI was leaking this stuff all over, to put it in the hands of the Director was a perfectly appropriate device. There was no coverup in that and I don't apologize for it for a minute.

Mr. DASH. But why—

Mr. EHRLICHMAN. The coverup that I was invited to participate in, in the call from the President's office, was of quite another nature and this was Pat Gray suggesting to me, "I never got them" and "I will deny I ever got them" and that kind of thing which I just couldn't countenance.

Mr. DASH. Isn't he saying the same thing in the earlier call?

Mr. EHRLICHMAN. No.

Mr. DASH. He is saying let's not make a distinction and let's make it clear that it went to the FBI so that no one would ever think I ever got them.

Mr. EHRLICHMAN. No; I don't think you can read that into it, Mr. Dash.

Mr. DASH. Did you ask him—did you ever say anything to him, such as, what is the problem, Pat?

Mr. EHRLICHMAN. I wish I had.

Mr. DASH. What is the problem? Why would Mr. Gray ask you to tell John Wesley, "To stand tall and make no distinction," what came into your mind that it would be concerning him?

Mr. EHRLICHMAN. Well, if he had testified "It came in two parcels and I have the one, I have the one parcel and it has nothing to do with Watergate but I am holding this one parcel" that they would zero in on that as they had zeroed in on other aspects of this thing and attempt to open it up and get at the political embarrassing documents and exploit it.

Mr. DASH. To that extent you were assisting him in preventing that from happening?

Mr. EHRLICHMAN. I would hope so—that was the whole idea of delivering it in two parcels so far as that was concerned.

Mr. DASH. Then you were carrying out, well, again, you may disagree with my term by carrying out, at least a coverup of delivering to Mr. Gray the separate sensitive political documents so it wouldn't be exploited.

Mr. EHRLICHMAN. Well, there was no intent here to, in any way, do away with those documents or keep them from persons who had a proper right to them.

The thing that disturbed me in the April conversation, of course, was his invitation to me to side in with him in the story that he never got the documents in the first place, against the background of his having destroyed them, and after hanging up the phone I thought, well, I have got to just make this as clear as possible to him that I am not in this.

Mr. DASH. But at that point Mr. Dean had already been to the prosecutors and cut you out of the packet. It was clear that Mr. Gray had got the packet.

Mr. EHRLICHMAN. Well, it did not—it did not come to the President from the U.S. attorney that the documents had been destroyed. So far as I know, that was discovered in this phone conversation with Mr. Gray for the first time.

Now, I heard testimony here to the effect that I knew back in January or sometime, that these documents had been destroyed and that is totally incorrect. In point of fact, had I known anything about the destruction of the documents back at that time, I dare say that my recommendation to the President, with regard to Mr. Gray's nomination, would have been very strongly negative.

Mr. DASH. Well, my question to make it very clear does not go to your knowledge of the destruction of the documents at that time. It goes to the question of your knowledge that he did receive the packet and that you did, in fact, carry out Mr. Gray's request to tell Mr. Dean to stand tight in such a way that he shouldn't make a distinction between FBI agents and directors and—

Mr. EHRLICHMAN. Just as it says.

Mr. DASH. Just as it says there as you have indicated to keep any politically embarrassing matters from being exploited.

Mr. EHRLICHMAN. Leaked.

Mr. DASH. Or leaked.

Now, on July 26 your diary shows you met with Mr. Kalmbach and by that time, you already OK'd, I take it, Mr. Dean's use of Mr. Kalmbach for raising funds for legal defense of the Watergate defendants.

Now, how did that come about? Did Mr. Dean come to you and say that he wanted to be able to contact Mr. Kalmbach for this purpose?

Mr. EHRLICHMAN. Well, I wouldn't want to answer this question in any way that might seem to adopt the lengthy preamble that you just delivered. I have testified a couple of times about the conversation that I actually had with Mr. Dean in this connection and very simply, as I recall, it was a phone call or it may have been one of these information meetings, he said, "I wish you would back me up. John Mitchell feels very strongly that he has got to try and recruit Herb to do this defense fundraising and I am going to ask him to do that." It was just—just about that much.

Mr. DASH. And on that alone you allowed Mr. Kalmbach, at least Mr. Dean to go to Mr. Kalmbach and ask him to do it?

Mr. EHRLICHMAN. I didn't allow anybody to do anything. I mean, it wasn't up to me to grant permission to anybody to do anything under those circumstances.

Mr. DASH. Well, I think Mr. Kalmbach has testified that, and I think you used the term during your interview, that you had sort of a lock on Mr. Kalmbach and I think your testimony is that, in order to protect Mr. Kalmbach from being imposed upon, that you would say that after he had done his original work that they couldn't come to him and ask him to do other fundraising without getting any approval through you or Mr. Haldeman; isn't that right?

Mr. EHRLICHMAN. Well, I couldn't possibly agree to that very long question, Mr. Dash. There are so many things wrong with it. What actually happened, as I again testified a couple of times to you, is that when the April 7 campaign financing law was coming into effect, Mr. Kalmbach let us know or let me know that he didn't want to do any more fundraising in the campaign. Morrie Stans was pressing him hard to help him, very tough job. Herb wanted to be relieved of that and he wanted to do some other kind of chores in the campaign that he would find more interesting. And so we agreed that if either Mr. Mitchell or by then I think it was—let's see, I guess it was Mr. Mitchell still then, and Mr. Stans approached Herb that Herb could use me and Bob Haldeman as an excuse, that he was working for us and that we would back him on that.

Mr. DASH. That is what I thought I had asked you. Maybe my question wasn't that clear. I thought I said that you had made an arrangement with Herb to protect him.

Mr. EHRLICHMAN. You have a way of festooning your questions, Mr. Dash, with facts that apparently are only in your knowledge.

Mr. DASH. Well, we won't go back and forth on this. I will follow up the questioning.

Now, did you know at all how much money would be involved?

Mr. EHRLICHMAN. No.

Mr. DASH. You didn't inquire?

Mr. EHRLICHMAN. No.

Mr. DASH. Did you know how the money was going to be raised?

Mr. EHRLICHMAN. No.

Mr. DASH. Did you inquire?

Mr. EHRLICHMAN. No.

Mr. DASH. Now, you knew——

Mr. EHRLICHMAN. You are speaking now as of the time of my conversation with Mr. Dean.

Mr. DASH. With Mr. Dean, yes. You knew, of course, by that time that Mr. Hunt and Mr. Liddy were among the defendants who would be assisted by this.

Mr. EHRLICHMAN. I assume so. I am not certain of that but I assume so.

Mr. DASH. I think the newspapers and public record would have brought that out.

Mr. EHRLICHMAN. Well, I can't relate the two.

Mr. DASH. Now, again, didn't you have a special purpose to assist in the paying of their legal defense fund?

Mr. EHRLICHMAN. I didn't have any purpose, general or special.

Mr. DASH. Well, in other words, you are saying Mr. Hunt and Mr. Liddy, who had been involved in the Plumbers' activity and the Ellsberg break-in now and being involved here, were you not concerned that unless they were paid their legal defense fees that they might well cause some trouble?

Mr. EHRLICHMAN. No. As I recall, the context in which this was discussed was primarily a Cuban emigré stimulated defense fund which John Dean told me about, that was being created in Florida and would be the vehicle for this, and so if anything, my focus would have been on those participants in this in that particular conversation.

Mr. DASH. Well then, why did they need Mr. Kalmbach?

Mr. EHRLICHMAN. To bring money in, I assume, and this was again—again, I did not question this at all. It was something that was just brushed over in passing.

Mr. DASH. In other words, you did not think at this time that this money would go to pay Mr. Hunt's lawyers or Mr. Liddy's lawyers?

Mr. EHRLICHMAN. It just was not a question that I addressed myself to one way or the other, either affirmatively or negatively.

Mr. DASH. And this is the kind of thing that you did treat that lightly?

Mr. EHRLICHMAN. Yes, sir.

Mr. DASH. Now, having, as you indicated, just treated it as lightly as you did when Mr. Dean came, you did meet Mr. Kalmbach on the 26th. I know there is a dispute in your testimony concerning what the purpose of that meeting was. Mr. Kalmbach has testified here and he testified that because of the clandestine manner in which he was being asked to have this money disbursed, he really became concerned and that he really wanted to check on Mr. Dean's authority and he trusted you so much that he came to you. I think we have had his testimony of his dramatic confrontation with you, which involved, look into my eyes and I will look into yours, do I really have to do it, and at a later telephone call which spoke about that meeting.

Now, is it still your testimony that Mr. Kalmbach did not come to you and express deep concern about his carrying out this activity—this defense raising money and wanted to come back and ask you whether or not it was proper and should he really do it and do it secretly?

Mr. EHRLICHMAN. Would you restate the question?

Mr. DASH. Well, on July 26, did Mr. Kalmbach come to you and, as he has testified before this committee, express his deep concern about the propriety of his continuing and raising this money and ask you to tell him it is all right?

Mr. EHRLICHMAN. Mr. Dash, I have no recollection of any conversation with Mr. Kalmbach, be it on this date or on the 14th when we met and I believe discussed this same subject in which he asked me to vouch for the propriety of what he was doing.

As I explained before to Senator Gurney, I would be very, very slow to assure Herb Kalmbach of the propriety of any undertaking unless I myself were satisfied of it, because Herb is the last fellow in the world that I would want to involve in something that was improper. So I just do not recall that happening and I doubt very seriously that it ever did happen in those kind of terms.

Now, your previous question or attempt had something in it about John Dean's authority and that is the reason that I wanted you to repeat the question.

I am not aware of any possible question of John Dean's authority to ask Mr. Kalmbach to do something as being an issue between us at any time. It does not make sense. It does not—it is not related to our true relationship in any way. In other words, for someone to come to me and say, "Does John Dean have authority to ask me to do it?" is out of whack with what was our real relationship, which was Herb Kalmbach could do anything he wanted to do, but that if he wanted an excuse, we would be his excuse not to do it. And it developed he agreed to do this and he was well down the road, you see, starting back in June and here we are talking about the third week in July, and he has been doing this all this time. That is more characteristic, it seems to me, of our true relationship which was that he was a free agent to do anything he wanted to do, but if he was looking for an excuse, we would be his excuse not to do it vis-a-vis Mr. Mitchell or Mr. Stans. So this business of John Dean's authority is what really got me kind of doubtful about your other form of question.

Mr. DASH. Well, the question was based on Mr. Kalmbach's testimony under oath here in which he testified that he had come to you to check on that authority. When Mr. Dean, he said, asked him to do something, or you, that he felt such people so high up in the White House, it was like coming from the President and that he would follow these instructions because he wanted to be of service.

Mr. EHRLICHMAN. Well, let me comment on that, if I may, Mr. Dash.

Our relationship with Herb Kalmbach was never one of principal and agent where we simply issued instructions to him when we wanted him to help out. It was always very much on a peer relationship where, if there were a project that we were interested in having his help on, of one kind or another, be it legal work of anything else, we requested him and if he did not feel comfortable with it or he had an adverse relationship in the office, his private practice, or if he just did not like the sound of it, he felt very free to say no, thank you, and this business of his marching to orders from the White House does not—it just does not ring true to me.

Mr. DASH. May I refer you to your telephone conversation with Mr. Kalmbach on April 19, 1973, and ask you to look at page 4. And I will

read whatever you want me to read but let me start with Mr. Kalmbach's statement or I can begin with you, Mr. Ehrlichman, somewhat down the line:

But I think the point which I will make in the future if I am given the chance, that you were not under our control in any sort of slavery sense but that we had agreed that you would not be at the beck and call of the committee.

Mr. KALMBACH. And, of course, too, that I act only on orders and, you know, on direction and if this is something that you felt sufficiently important and that you were assured it was altogether proper, then I would take it on because I always do it and always have. And you and Bob and the President know that.

Then, you reply—

Yeah, well, as far as propriety is concerned, I think we both were relying entirely on Dean.

KALMBACH. Yep.

EHRlichMAN. I made no independent judgment.

KALMBACH. Yep. Yep.

EHRlichMAN. And I'm sure Bob didn't either.

KALMBACH. Nope and I'm just, I just have the feeling, John, that I don't know if this is a weak reed, is it?

EHRlichMAN. Who, Dean?

KALMBACH. No, I mean are they still going to say well, Herb, you should have known.

Now, you testified, one, that it was not on orders, that he did not act that way, and, two, that the question of propriety never came up, but here is Mr. Kalmbach talking to you and you are certainly not disagreeing with him, that he is saying that—

I act only on orders and, you know, on direction and if this is something that you felt sufficiently important and that you were sure it was altogether proper, then I would take it on because I always do it.

Now, at that point you say that the propriety issue, you based upon Dean's judgment and made no independent judgment, and neither did Bob Haldeman make any independent judgment.

Now, I take it that this is where the testimony rests.

Mr. EHRlichMAN. What is your question, Mr. Dash?

Mr. DASH. Well, the question is that when Mr. Kalmbach called you on this particular date, on April 19, he was reminding you that he was acting on orders?

Mr. EHRlichMAN. Or did I remind him, Mr. Dash?

Mr. DASH. You were reminding him then that you relied on the propriety issue?

Mr. EHRlichMAN. No. What I am reminding is that "You were not under our control in any sort of a slavery sense." And that is—

Mr. DASH. Not a slavery—

Mr. EHRlichMAN. Precisely what I am testifying here, principal agent or servant or whatever you want.

Mr. DASH. Not a slave but he says "I take orders and if you direct me, I do it?"

Mr. EHRlichMAN. You have been highly selective, Mr. Dash. I will stand very flatly on all four corners of that conversation.

Mr. DASH. I think you have and it is obvious what you are telling Mr. Kalmbach now is you made only independent judgments on the propriety.

Mr. EHRlichMAN. That is what I testified to you.

Mr. DASH. I know, Mr. Kalmbach has come and testified to us that he counted so much on your reassuring him that it was proper, and

you told him, according to Mr. Kalmbach's testimony that, yes, it was important that he do it and that had to be secreted and that if they did not do it that way they might have their head in their lap. The record will show it so.

Mr. EHRLICHMAN. As you see, my recollection before he testified is the same as it is now.

Mr. DASH. Now, in August 1972, we have had testimony on this, but I am just raising this.

Mr. EHRLICHMAN. We had testimony on all of that.

Mr. DASH. Well, I know, but right now it is a question of bringing some of this down to a little more finiteness than we have had it. You called Mr. Petersen and asked that Mr. Stans not go to the grand jury. You did that in August 1972. I think we have had plenty of testimony on that.

Mr. EHRLICHMAN. Do we know that? I was not able to fix that date. What date do you have for that?

Mr. DASH. Sometime in August of 1972.

Mr. EHRLICHMAN. I am not able to say.

Mr. DASH. I do not have the specific date.

Now, do you recall meeting Mr. Kalmbach again on August 8? It is in your diary that you did.

Mr. EHRLICHMAN. Not with regard to any specifics that were discussed in the meeting. I see it on the log and I have no doubt that it took place.

Mr. DASH. All right, now Mr. Kalmbach's recollection was that after he had that meeting with you, he then went out and he obtained some private funds from a private contributor, \$75,000, and that when he saw you on the 8th, that he just reported to you that he was able to raise \$75,000 from a private campaign contributor for this defense fund. Do you recall his reporting to you that he was able to raise that money at that time?

Mr. EHRLICHMAN. I had the impression that that was what he was telling me July 14 out in his office because we discussed his use of Tony Ulasewicz to carry money, and my impression was that he was carrying that from the west coast to the east coast. I never did know the amount that he raised until I talked to Mr. Kalmbach in April of this year while I was conducting this inquiry, and I don't recall his ever telling me who it was that he raised the money from, although I heard him testify to the effect that—

Mr. DASH. Did he tell you how much he raised?

Mr. EHRLICHMAN. I think in April he did, yes. I think he told me \$70,000.

Mr. DASH. Well, I mean earlier. I am talking about some time in August.

Mr. EHRLICHMAN. No. I don't think I knew about it before April of this year.

Mr. DASH. Did you know at all that he raised it from a private campaign contributor?

Mr. EHRLICHMAN. Campaign contributor?

Mr. DASH. Yes. Somebody who had been giving campaign funds for the reelection of the President.

Mr. EHRLICHMAN. I think he described to me that it was a business—my impression was it was two people and they were in California and that was all the description that I think I had.

Mr. DASH. Did that raise any problem in your mind that maybe Mr. Kalmbach was going to campaign contributors for defense funds?

Mr. EHRLICHMAN. No. I didn't connect the two. I don't believe.

Mr. DASH. All right. Now, after June 17, the date of the break-in, what information did you have, Mr. Ehrlichman, about Mr. Magruder's involvement in the Watergate? Shortly after.

Mr. EHRLICHMAN. There was a lot of—there was a lot of suspicion shortly after and I would put this in, say, the first 6 weeks after the break-in, a good deal of suspicion of Mr. Magruder largely based on what Mr. Sloan was saying to people, and so there was a good deal of speculation that I can recall during that—during that period of time and it culminated in the conversation which Mr. Dean and I had with the Attorney General on July 31, where this was specifically discussed; that is, Mr. Magruder's involvement. The Attorney General said based on the FBI interviews and prosecuting attorneys' examination into Mr. Magruder's involvement, that it appeared that any involvement that he had related to money and there was a square dispute between Mr. Magruder and Mr. Sloan as to the truth of the assertion about Mr. Magruder's involvement, and that the Attorney General anticipated that Mr. Magruder might possibly be going to take the fifth amendment before the grand jury.

Now, that remained the open question, so far as I knew, until Dean or someone told me that Magruder had in fact testified to the grand jury, and then as matters unfolded, he testified at the trial and he was considered to have told the truth and he came out, sort of the—out of the shadow at that point.

Mr. DASH. All right. But were you aware that during this period of time, the end of June, July, and August, that Mr. Mitchell, Mr. LaRue, Mr. Mardian, Mr. Magruder, Mr. Dean, were in frequent meetings, daily meetings, discussing the fact that Magruder's involvement—

Mr. EHRLICHMAN. No.

Mr. DASH [continuing]. And the fact that Magruder was going to tell a particular story to the grand jury?

Mr. EHRLICHMAN. No. I was not.

Mr. DASH. Mr. Dean has testified he acted as a liaison and he did inform you.

Mr. EHRLICHMAN. Yes, well, that is not correct.

Mr. DASH. As a matter of fact, if he had, it would not be inconsistent with the meeting in the presence of the Attorney General, where the Attorney General reported there was nothing of Mr. Dean's being silent, if in fact, Dean was involved in a coverup. I take it he would not let the Attorney General know about it.

Mr. EHRLICHMAN. Would you repeat that question?

Mr. DASH. I was saying, you said the only time you had any clear understanding, at least the Attorney General's understanding of Mr. Magruder's involvement, was when he met with you and Mr. Dean and told him there was no involvement. Is that true?

Mr. EHRLICHMAN. Mr. Magruder and—

Mr. DASH. The Attorney General.

Mr. EHRLICHMAN [continuing]. Mr. Magruder and the Attorney General met with Mr. Dean and me.

Mr. DASH. Yes.

Mr. EHRLICHMAN. I don't recall any such meeting.

Mr. DASH. You did say the Attorney General reported to you concerning Mr. Magruder, did you not?

Mr. EHRLICHMAN. Yes.

Mr. DASH. And what did he tell you?

Mr. EHRLICHMAN. Just what I just testified, that they considered it an important conflict in the evidence as between Sloan and Magruder, and the way it looked to the Attorney General at that point in time, Mr. Magruder might take the fifth amendment.

Mr. DASH. Now, you were aware that on September 15 the indictment came down on the so-called seven defendants?

Mr. EHRLICHMAN. Yes.

Mr. DASH. You had a meeting with Mr. Haldeman on September 15. Did you discuss the indictment at that time?

Mr. EHRLICHMAN. Well, I did not have any extraordinary meeting with Mr. Haldeman on the 15th. That would have been just the early morning staff meeting, I assume, which would have included all of the department heads in the White House.

Mr. DASH. What time was that meeting?

Mr. EHRLICHMAN. 8 or 8:15 in the morning.

Mr. DASH. I think the diary we have on you shows a meeting of 11 in the morning. Does your diary show that?

Mr. EHRLICHMAN. Let me check. You are correct. I do not know the purpose of that meeting, Mr. Dash. I have no idea. The indictments, however, the market around the White House sort of discounted that September 15 action, so to speak, by reason of the Attorney General's announcement of September 12 to the President and the Cabinet, to some of us assembled, that the seven suspects were the only ones who would be indicted. So I do not think the announcement on—the formal announcement on the 15th was in fact any news to discuss.

Mr. DASH. When did you first learn of Mr. Segretti's activities and the possible role of Mr. Chapin in those activities?

Mr. EHRLICHMAN. I think that was at the time it first began to be talked about in the press. I had not heard of Segretti as an individual prior to that time.

Mr. DASH. Then, did you hold any meetings involving that incident?

Mr. EHRLICHMAN. Involving what incident?

Mr. DASH. Mr. Chapin's role in the Segretti matter.

Mr. EHRLICHMAN. There were a number of meetings to determine what the White House news position or press position should be on that, yes.

Mr. DASH. Did you, as a result of those meetings, learn about Mr. Chapin's role with Mr. Segretti?

Mr. EHRLICHMAN. I am not sure that I learned about them in those meetings as such, but I did begin to learn more at the end of October and the first couple weeks of November, yes.

Mr. DASH. Did you participate in the preparation of the public statements concerning Mr. Chapin's role?

Mr. EHRLICHMAN. Yes, I did.

Mr. DASH. Is it not true that those statements did not, in effect, acknowledge Mr. Chapin's role in either employing Mr. Segretti or having Mr. Segretti work for the campaign?

Mr. EHRLICHMAN. You say did not in effect, acknowledge?

Mr. DASH. Did not acknowledge.

Mr. EHRLICHMAN. Did not acknowledge? Well, I was under the impression that the material that was being worked on—and you have an exhibit and I think has my handwriting on it—

Mr. DASH. Yes.

Mr. EHRLICHMAN [continuing]. Had a couple of depositions that were, or affidavits that were, proposed to be attached which did make rather full and complete acknowledgement. Unfortunately, those were not released, but that would have been the form of release that I would have preferred.

Mr. DASH. But you recommended there be a full release of Mr. Chapin's involvement?

Mr. EHRLICHMAN. Yes, sir.

Mr. DASH. Do you recall in September 1971 traveling with the President, I think you indicated you traveled with the President to Japan at that time.

Mr. EHRLICHMAN. No, sir.

Mr. DASH. When did you go to the President in Japan?

Mr. EHRLICHMAN. The President went to Hawaii to meet the Japanese Prime Minister in September. Is that what you mean?

Mr. DASH. Yes.

Mr. EHRLICHMAN. Yes, I did.

Mr. DASH. Did you accompany him?

Mr. EHRLICHMAN. Yes, sir.

Mr. DASH. Did you stop on your way at the Benson Hotel in Portland?

Mr. EHRLICHMAN. Well, we did sometime, and I cannot remember whether it was on that particular trip or not. My recollection is we went—let us see—no, we went right straight out and right straight back to Hawaii, went out on the 30th direct to Hickam, and we came back from Hickam direct to El Toro on September 1.

Mr. DASH. When, Mr. Ehrlichman, did you first become aware that Mr. Hunt was seeking Executive clemency?

Mr. EHRLICHMAN. I am not sure that I was ever aware in the terms that you have just framed your question, that Hunt was seeking Executive clemency, in those flat terms.

Mr. DASH. When—

Mr. EHRLICHMAN. I became aware after Mr. Colson had had his conversation with Mr. Bittman—Mr. Bittman had attempted to open a conversation with Mr. Colson on that subject which Mr. Colson says he refused to engage in.

Now, that is as far as that ever went in behalf of Mr. Hunt, so far as I know.

Mr. DASH. And you do not know of any assurances that Mr. Bittman or Mr. Hunt received from Mr. Colson concerning an Executive clemency?

Mr. EHRLICHMAN. Well, Mr. Colson stated to me precisely the opposite, that he had been very careful in not making any assurances to him.

Mr. DASH. Now, I think, your diary shows you did meet with Mr. Colson and Mr. Dean on January 3, and then you met with the President and Mr. Haldeman on January 4 and again with Mr. Dean and Mr. Colson on January 5. This is approximately the time that Mr. Dean had testified that the request or the issue came up concerning Mr. Hunt's desire for Executive clemency. Mr. Colson and Mr. Dean, according to Mr. Dean's testimony, spoke to you about it and that you said, according to his testimony, that you would check with the President and came out and said that no commitment should be made, but that some assurance should be given to him. Do you recall that, not the testimony, but do you recall him doing that?

Mr. EHRLICHMAN. Doing what, Mr. Dash?

Mr. DASH. Being asked by Mr. Colson and Mr. Dean to raise the question of Executive clemency for Hunt with the President?

Mr. EHRLICHMAN. All right, stop right there. They did not do that. Now, go ahead.

Mr. DASH. All right.

You are checking with the President whether or not it would be possible to give Mr. Hunt Executive clemency.

Mr. EHRLICHMAN. That would be on the 4th of January in the company of Dr. Kissinger and Mr. Haldeman; is that right?

Mr. DASH. Sometime around that.

Mr. EHRLICHMAN. That meeting at 3:02 on the 4th. Is that the meeting you are suggesting?

Mr. DASH. You met with the President a couple of times during that period of time but on the 4th you did meet with the President?

Mr. EHRLICHMAN. I did not, as a matter of fact. I met with the President one time on the 4th at 3:02 in the company of Mr. Haldeman and Dr. Kissinger. Is that the time you are suggesting that I asked the President if we could give Mr. Hunt Executive clemency?

Mr. DASH. Did you meet with the President on January 5?

Mr. EHRLICHMAN. Not according to my record. Oh, excuse me, Dr. Kissinger and I had a 10-minute meeting with the President at 4:55 on that day.

Mr. DASH. Did you at any time meet with the President and discuss Executive clemency?

Mr. EHRLICHMAN. Yes.

Mr. DASH. When?

Mr. EHRLICHMAN. In July of 1972.

Mr. DASH. Now, why in July of 1972 would you be discussing Executive clemency with the President?

Mr. EHRLICHMAN. Because it occurred to me as an organizational proposition that sooner or later somebody was going to raise this issue and I thought it would be a very good idea to talk it through with the President before it came up in any specific context, and find out exactly where we stood.

Mr. DASH. By that time the indictment had not come down?

Mr. EHRLICHMAN. That is correct.

Mr. DASH. It was shortly after the break-in. Why would it even come to your mind that any of the defendants would have raised the question of Executive clemency?

Mr. EHRLICHMAN. Because you had a defendant who was an employee of the Committee To Re-Elect the President and it seemed to

me just a very natural thing that inferences would be raised at some time in the future. We had a long walk on the beach on that particular day and we talked about a lot of subjects and this was one of the subjects we talked about.

Mr. DASH. Had you had any discussion with Mr. Colson or Mr. Hunt at that time about it?

Mr. EHRLICHMAN. At that time?

Mr. DASH. Yes.

Mr. EHRLICHMAN. Not that I can recall.

Mr. DASH. It would seem unlikely that you would and it just is somewhat surprising that so early after the break-in you would even be talking about Executive clemency with the President.

Mr. EHRLICHMAN. Who did it surprise, Mr. Dash?

Mr. DASH. I said it does seem surprising.

Mr. EHRLICHMAN. To you?

Mr. DASH. To me, that you in July, shortly after the break-in, before any indictments, that you would be discussing Executive clemency, but that is your testimony, that you did.

Mr. EHRLICHMAN. All right, that is what happened.

Mr. DASH. And you never did after having any discussions with Mr. Dean later on in January?

Mr. EHRLICHMAN. I am sorry, I did not hear the question.

Mr. DASH. And you never again discussed that with the President after talking with Mr. Dean about Executive clemency?

Mr. EHRLICHMAN. Never again? No, I think there were discussions in March and April of this year about the allegations that Mr. Dean was making.

Mr. DASH. I am referring back earlier to the January period because, to put the point in time accurately, just before Mr. Hunt pleaded guilty is when Mr. Dean—

Mr. EHRLICHMAN. Mr. Dean's original story was, of course, that I jumped up from the meeting and ran downstairs and popped into the Oval Office which, of course, was nonsense. So then, he contrived this other story and neither one of them are true, Mr. Dash.

Mr. DASH. On February 10, 1973, you, Mr. Haldeman, Mr. Dean, and Dick Moore did meet in La Costa, did you not?

Mr. EHRLICHMAN. Yes, sir.

Mr. DASH. Could you tell us what the purpose of that meeting was?

Mr. EHRLICHMAN. Yes, that meeting was called because the President had asked who was handling the preparation of the White House case for the Senate Select Committee hearings, and what planning was being done, and what was the White House position going to be on matters like executive privilege, and there were no answers to those questions. We had just come from the inaugural, everybody had been very busily occupied up to that point, and frankly, there was not anybody handling that, and so one of us, and I forget who, called John Dean and asked him to come out, and sit down and talk through this whole subject of White House response, so to speak, to the upcoming hearings of the Senate Select Committee.

Mr. DASH. Well, did the discussion include just—not only the White House response in general on executive privilege issues, but did it also include what steps you might take in terms of affecting the resolution authorizing this committee? What steps you might take in obtaining

a minority counsel that would be helpful, and evaluation of members of the committee as has been testified by Mr. Dean before this committee?

Mr. EHRLICHMAN. Well, there were—it was a little bit like attorneys meeting before a trial to talk about the upcoming trial and what the selection of the jury would be like, and the kind of jurors that you would prefer to have in a case of this kind, and what opposing counsel was like and so on and so forth. It was sort of a general brainstorming session on the subject, and all those subjects that you mentioned came up, as did a whole raft of other subjects relating to these upcoming hearings.

Mr. DASH. Now, are you aware of then what assignments were given to anybody to follow up on this discussion?

Mr. EHRLICHMAN. Yes, Mr. Dean was given an assignment to attempt to prepare a general statement of Watergate in its broadest aspects, money, Segretti, planning and discussion of the break-in, the widest kind of a preliminary statement because it was decided that rather than to die by inches in terms of having questions asked and tiny bits of fact come out in answers through the process of the hearing, it would be much better if the entire story were laid out in a comprehensive statement in advance. So Mr. Dean was given that assignment.

After a number of hours of discussion, it was sort of the consensus of the meeting, that the best possible management entity would not be the White House or Government people but would be the Committee To Re-Elect, and so the thought was that the Committee To Re-Elect with John Mitchell stepping back into the management of it, would be an ideal focal point for all kinds of the various management problems associated with these hearings.

Dick Moore was going to go and talk with John Mitchell about this idea. I heard the testimony about Dick Moore going up to talk to him about money, that had to do, as I recall, with a specific aspect of this. Mr. Dean raised the point that these defendants in the break-in case—many of them either had cases that were pending sentencing, were on appeal, or in some kind of an interlocutory stage and that they might have the right to have their rights protected by seeking a judicial delay of the committee hearings. It was recognized in the course of passing that was going to obviously require the services of attorneys and the attorneys would have to be paid and so that was, as Dick Moore testified, a rather passing subject but nevertheless it was noticed as a money problem that could not be satisfied out of campaign funds and that he should also talk to John Mitchell that—

Mr. DASH. But why would you, Mr. Ehrlichman, and Mr. Halde- man, and Mr. Dean, with your positions in the White House concern yourselves over the criminal defense lawyers case that might have some impact on delaying this committee. Was it a strategy issue?

Mr. EHRLICHMAN. It was in the nature of a strategy issue and it was a passing strategy issue. I wouldn't want it to get out of proportion and have you focus on it.

Mr. DASH. I am not trying to focus on it.

Mr. EHRLICHMAN. Being sort of a central strategy issue here, it was merely a glancing blow or passing reference to an aspect of this which Mr. Dean raised as a legitimate part of the strategy questions.

Mr. DASH. All right.

Taking it as a passing blow or something, and not certainly a central theme, it was considered as a strategy to keep this committee from going forward with its hearings.

Mr. EHRLICHMAN. This meeting covered dilatory tactics, it covered a wide variety of subjects, including dilatory tactics, but certainly not limited to them.

Mr. DASH. What did you have to be afraid of?

Mr. EHRLICHMAN. Sir?

Mr. DASH. What did you have to be afraid of the committee getting started?

Mr. EHRLICHMAN. I think it was conceived that the attack would be highly partisan, that it would be strongly antiadministration, and anti the President. Senator Ervin was then believed to be a very partisan man, and I think there was strong concern that this whole process of this Select Committee would have worked to the serious disadvantage of the administration. There was no—there was certainly no acceptance of the thought that the undertaking was totally benign.

Mr. DASH. This was on February 10, the La Costa meeting we are talking about.

Then, I take it, have you had an opportunity, and I don't want to take any time on it, to see the agenda items that Mr. Dean testified that later went in to the President concerning the discussion with Senator Baker and also minority counsel issues?

Mr. EHRLICHMAN. Yes, I did. I think that the suggestion that that somehow relates to the La Costa meeting is badly overdrawn and fancitized. I think Mr. Haldeman is your better witness on this, but from what I know of what took place at the La Costa meeting, the relationship between the two is much more tenuous than Mr. Dean attempted to draw out.

Mr. DASH. I agree with you Mr. Haldeman is, but in a followup of La Costa rather than La Costa.

Mr. EHRLICHMAN. No. Even there I think the proximate relationship is doubtful.

Mr. DASH. Let's go back briefly to perhaps your diary which is not as accurate as the White House log. On January 4, 1973, you indicated that you perhaps wouldn't take up in the presence of Dr. Kissinger the issue of Executive clemency.

Mr. EHRLICHMAN. No, I didn't say that. I just asked you if that was the meeting you were relating to.

Mr. DASH. On January 4, 1973, does your diary show that you met with the President from 3:02 p.m. to 4:44 p.m. and that you were with Mr. Haldeman in that meeting from 3:02 to 4:44 which is the full period, Mr. Collins from 3:04 to 3:05, and 4:18 to 4:49, and Mr. Kissinger—Dr. Kissinger 4:30 to 5:15.

Mr. EHRLICHMAN. Well, I don't have all those refinements in my diary but I show that Dr. Kissinger was in the meeting I was in for approximately 45 minutes of a total of about 1 hour and 40 minutes, something of that kind.

Mr. DASH. There was a time when you were with the President and Mr. Haldeman and yourself alone?

Mr. EHRLICHMAN. I assume so.

Mr. DASH. In March 1973 did you become aware—and I think you so testified—of the increased demands of Hunt for money, so-called Hunt's blackmail?

Mr. EHRLICHMAN. Well, I wouldn't use the word increased because I think—I didn't have any frame of reference in which to identify this as an increase. I certainly am familiar with the blackmail.

Mr. DASH. Of a demand, of the blackmail. Who informed you of this?

Mr. EHRLICHMAN. Mr. Dean.

Mr. DASH. Did it raise a question in your mind at least at this time, again having recall that money was paid for defense, of the propriety of paying this money when such a demand was being made?

Mr. EHRLICHMAN. Oh, certainly—well, let me separate out all of the testimony that you have just inserted in that question and maybe you could restate the question without all the embellishments.

Mr. DASH. I will ask just the same question: You had found nothing wrong and, as a matter of fact, just beforehand, on the February 10 meeting, again had discussed making certain payments or going up to Mitchell—having Mr. Moore go see Mr. Mitchell about raising some funds for the defendants, and now in March 1973, some time in March you become aware of a demand, Mr. Hunt's, of what you just called blackmail.

Mr. EHRLICHMAN. The difference between the two is dramatic. There was no suggestion at La Costa that any money be paid in consideration of anybody's silence or anything of that kind. The money we were talking about at La Costa was to compensate attorneys who would file motions in behalf of the defendants, and as far as I am concerned that would have been a completely legitimate undertaking, privately raised funds for that purpose. This was a flat out blackmail attempt, if money was not paid then Hunt would say so-and-so, but if money were paid he would not say so-and-so. That is the first time I encountered anything of that sort in this entire—what would that be, 10 months?

Mr. DASH. Well, were you aware that back in November Mr. Hunt had a telephone conversation with Mr. Colson, and Mr. Colson taped that conversation with regard to Mr. Hunt wanting money and being very unhappy that he wasn't getting the kind of money he was requesting?

Mr. EHRLICHMAN. Well, I have heard testimony about that and that I am supposed to have heard that tape.

Mr. DASH. Did you hear that tape?

Mr. EHRLICHMAN. I don't recall ever hearing that tape. I recall Mr. Dean coming to Camp David on one occasion during the 2 months we were up there. We have repeatedly—since he testified to that effect—we have repeatedly tried to get a transcript or a copy of that tape without success from your staff but I would certainly like to see it because I—

Mr. DASH [interrupting]. Have you—

Mr. EHRLICHMAN [continuing]. I just draw a blank.

Mr. DASH. Mr. Wilson, have you made a request?

Mr. WILSON. Neither I nor Mr. Strickler asked Mr. Hamilton for that.

Mr. EHRLICHMAN. Well, in any event, the answer to your question is that I just really draw a blank on that. It doesn't relate to anything I can recall.

Mr. WILSON. May we have it now?

Mr. DASH. Yes. I have a copy, if somebody would take it for you to peruse.

Senator ERVIN. If it will refresh your recollection and, if so, I would like you to respond.

Mr. WILSON. May we keep that?

Mr. DASH. It is my only copy but I will make a Xerox copy for you.

Mr. EHRLICHMAN. Counsel, I don't recall ever either seeing this transcript or—

Mr. DASH. Mr. Wilson, would you like a copy of that?

Mr. WILSON. Please.

Mr. DASH. You can return it and we will see that you do get a copy.

You stated a little earlier prior to my showing you that document that Mr. Hunt was making a demand—either I get so much money or I will tell this or that. What conceivably could Mr. Hunt have told?

Mr. EHRLICHMAN. The way John Dean explained it to me, the threat was in terms of he would tell seamy things about what he did at the White House for Mr. Krogh and me. Now, I took that to refer to the California break-in which is the only thing I could think of that would—that he ever did at the White House for me of any kind for that matter. And I asked Mr. Dean if he knew what this was about and he said he assumed that that is what it was about.

Mr. DASH. Now, do you recall a meeting with Mr. Dean and with Mr. Mitchell. I think, probably on March 22. Did you ask Mr. Mitchell whether or not Hunt's demand had been taken care of?

Mr. EHRLICHMAN. I heard that testified in point of fact, my recollection of that is that that conversation was between Mr. Dean and Mr. Mitchell and it was Mr. Dean saying just, is that matter taken care of, without reference to Hunt or anybody, and Mr. Mitchell sort of grunting and saying maybe, or I guess so, or something very vague.

Mr. DASH. Did you learn about that time that in fact Mr. Hunt's demand had been taken care of?

Mr. EHRLICHMAN. No. In fact it wasn't until the testimony here that I was aware of that.

Mr. DASH. And did you have any knowledge or awareness of Mr. Fred LaRue's role—

Mr. EHRLICHMAN. No.

Mr. DASH [continuing]. In making those payments?

Did you by the way tell the President about the blackmail demand?

Mr. EHRLICHMAN. By the time I discussed it with him, he already knew of it.

Mr. DASH. Now, it appears from certainly the White House logs we have received, that after the La Costa meeting, some time after February 10, Mr. Dean's meetings with the President increased really significantly because he had very few meetings prior to that time and then they were quite frequent. Could you explain to your knowledge, if you have any, why that occurred?

Mr. EHRLICHMAN. Yes, sir, I think I can.

At our next joint meeting, Mr. Haldeman's and mine, with the President, he said, well, how did the weekend go or words to that effect and when can I expect that statement, meaning this broad statement that Mr. Dean was to prepare.

One of us, and I think it was I, said I don't think you are going to get that statement, and he said, why not? And I said, well, John Dean has a lot of reasons why such a statement should not be released, and they related to the rights of defendants and to the civil suit that was pending and to the problems of executive privilege, and so on.

And the President expressed considerable patience and began to lean on me pretty hard, and I said, well, Mr. President, I am in the middle on this and I would be very grateful if you would have a personal conversation with John Dean about these problems, so that you would get a firsthand feel for the objections that he is raising to the request that you have been making. And he said, all right, I will do that. And it was very soon after returning to Washington that he—I have a note in one of my meetings with him that he wanted to see John Dean immediately that day, and he did, and that was the first meeting of this series. But I think it was—and about that same time the President said, I want you to stay out of this, to me. He got me started on a massive so-called surrogate operation of sending the Cabinet and administration people into the country on questions of impoundment and overspending and budget cuts and things of that kind, and I have very explicit instructions in my notes to the effect that I am to discontinue any further devotion of time to the whole Watergate subject, that Dean has it, that the President is satisfied that he is in charge and from that point forward I am out of it.

MR. DASH. Well, did you or anybody in your presence ever recommend to the President that it might be a good idea to have a number of meetings with Mr. Dean if executive privilege was going to be raised with regard to Mr. Dean's appearance?

MR. EHRLICHMAN. You mean attorney-client privilege.

MR. DASH. Or executive privilege.

MR. EHRLICHMAN. No.

MR. DASH. It came up during the Gray hearings and the issue of Mr. Dean being subpoenaed down or invited down, that the question would be that if he didn't meet with the President very much, whether there could be very much executive privilege or attorney-client privilege and to your knowledge in only asking whether you advised the President or in your presence advised the President that that would be an—

MR. EHRLICHMAN. You will remember, Mr. Dash, that I testified when I first got into this matter on March 30 again that one of the great remaining open questions was this whole business of how attorney-client privilege worked vis-a-vis the President and counsel to the President, and I had to call for a lot of briefing on that. It was still an open question but I was not well versed in the subject prior to that time and relied entirely on Mr. Dean to preserve that relationship in whatever way it should be preserved.

MR. DASH. Now we have had testimony from Mr. Dean—

MR. WILSON [interrupting]. Mr. Dash, may I interrupt you a moment to address the Chair?

Mr. Chairman, again on the question of scheduling, it is obvious that the examination of Mr. Ehrlichman will not be completed as we had hoped in time, and I want to mention again that Mr. Haldeman's statement will require at least 2 hours to read. I wouldn't like him to start it this afternoon and not complete it. If Mr. Dash—and I didn't want to limit Mr. Dash—if he goes for another hour, could I either have the assurance of the committee that Mr. Haldeman could read his whole statement before we recess this evening or that we will begin in the morning?

Senator ERVIN. Mr. Dash has just assured me that he has only about 15 minutes more. There will be a question of the other interrogator, being Mr. Thompson.

Mr. DASH. I am about finished, Mr. Wilson.

Senator ERVIN. We can certainly read his statement today because the committee decided this morning to start the meeting at 9:30 in the morning and run to 5 or 5:30 and to expedite these things because I think the country would like to get the investigations over, particularly this phase.

Mr. WILSON. I would be in favor of night meetings.

Senator ERVIN. Well, we will certainly see that Mr. Haldeman gets to read his entire statement today and I hope that we can complete the examination, notwithstanding the fact that I am just a little tempted to confess that at the time Mr. Ehrlichman was testifying about a while ago, I am sorry the conclusion was drawn that I was so partisan. I was partisan to the Constitution because I was fighting for the congressional view in respect to impoundment and also for the idea that the Constitution requires the confirmation of such important officers as Director and Deputy Director of the Office of Management and Budget. I was also calling attention about that time to the fact that the Supreme Court had held when a witness was subpoenaed to appear before congressional committees, if they didn't appear they could be arrested and brought before the Senate, and that was in direct opposition to the theory that there was an executive privilege that entitled a former, or resident, or White House employee, or aide from appearing before a congressional committee. I am sorry that caused a feeling that I was sort of partisan, because I doubt whether there is a Democrat in the Senate who voted more to sustain the President's position on economic issues and on war issues, and just the other day I voted against the war powers bill because I thought it encroached on the constitutional domain of the President.

Excuse the interruption. We will finish it. [Laughter.]

Senator BAKER. Mr. Chairman, it ought to be noted that that time will be deducted from counsel's time.

Mr. THOMPSON. Not minority counsel.

Mr. DASH. I think we have had testimony on the March 21 meeting of Mr. Dean and Mr. Dean testified that he gave a full story to the President concerning who might be involved in the Watergate, either in the break-in or the coverup, and that you did have an afternoon meeting with Mr. Haldeman, Mr. Dean, and the President on the 21st. Mr. Dean's testimony is that at that meeting he stated to all three of you, Mr. Dean, Mr. Haldeman, and Mr. Ehrlichman, were indictable.

Did Mr. Dean so state?

Mr. EHRLICHMAN. I have no recollection at all, Mr. Dash, of that being said at that time. As a matter of fact, it was several weeks after that, before we had a conversation with Mr. Dean, in which he finally alluded to my relationship with Mr. Kalmbach as presenting some embarrassment to me but certainly nothing that would be indictable, but back on March 21, I don't believe that Mr. Dean's theory of the case had crystallized yet.

Mr. DASH. Well, of course, on March 22, I think you have already testified, you met with the President, Mr. Haldeman, Mr. Dean, and Mr. Mitchell?

Mr. EHRLICHMAN. Yes.

Mr. DASH. All right. Let the record stand as the actual testimony. anything at that time, your guess was that he probably was not letting it out because he was still in the midst of his investigation.

It appears from your testimony and Mr. Mitchell's testimony, Mr. Dean's testimony, that the President did not confront any of the parties at that meeting with any of the charges, is this true?

Mr. EHRLICHMAN. That is correct. Now——

Mr. DASH. On March——

Mr. EHRLICHMAN. That is correct without adopting all of the preceding 11 sentences in your question.

Mr. DASH. Well, I took your testimony——

Mr. EHRLICHMAN. Well, I knew you paraphrased and I do not adopt your paraphrase.

Mr. DASH. All right. Let the record stand as was the actual testimony.

On March 28 you called Mr. Kleindienst. Now, certainly on March 21, the President has referred in his May 22, and I think his April 17 statement, that he learned new facts, serious facts.

Mr. EHRLICHMAN. Charges, I believe he states. Charges is, I think the word.

Mr. DASH. Charges. on March 21. And Mr. Dean has testified as to what at least so far as he was concerned, what charges he made.

Now, you weren't at that meeting, to be sure, on March 21, and yet when you called Mr. Kleindienst, you stated in that call that:

The President said to me to say to you that the best information he had and has in this, is neither Dean, nor Haldeman, nor Colson, nor I, nor anybody in the White House had any prior knowledge of the burglary.

Then you went on and that he was to get more information.

Now, I take it that if the President had received information from Mr. Dean, for instance, say Mr. Strachan had information on March 21, he would not be instructing you to call Mr. Kleindienst to give that message, would he?

Mr. EHRLICHMAN. Well, I certainly am not going to respond to that question, Mr. Dash. It involves your own personal hypothesis and it invites me to join you in it which I am not willing to do. I have stated what my hypothesis is with regard to the President's conduct after March 21 and I don't happen to agree with yours.

Mr. DASH. Well, I take it, perhaps maybe the best evidence of what occurred on March 21 between Mr. Dean and the President might be the tapes that recorded that conversation.

Mr. EHRLICHMAN. Or someone else who was present, like Mr. Haldeman.

Mr. DASH. We could still have the tapes also that might corroborate that discussion.

Now, did Mr. Dean ever show you a list, a handwritten list, actually, on his part that he made up after he had gone to the prosecutors, in which he had listed various people, who he claimed, based on information he was getting from the prosecutors and information he was giving to the prosecutors would be indictable for criminal charges?

Mr. EHRLICHMAN. Is that this exhibit that you have in your hand?

Mr. DASH. Yes. Exhibit—

Mr. EHRLICHMAN. No. He never showed that to me.

Mr. DASH. Did he ever show you that?

Mr. EHRLICHMAN. No.

Mr. DASH. He has so testified that he did and I guess that again you would say would be untrue on his part?

Mr. EHRLICHMAN. That is correct.

Mr. DASH. You have also testified that you were asked to make an inquiry on March 30 by the President.

Mr. EHRLICHMAN. Yes.

Mr. DASH. And you reported to the President on April 14?

Mr. EHRLICHMAN. Yes.

Mr. DASH. And the President came out with a statement on April 17.

Now, in between that time, on April 15, were you aware of the fact that Mr. Kleindienst and Mr. Petersen met with the President and reported fully to the President as to what information they were getting in the grand jury investigation?

Mr. EHRLICHMAN. Well, I precipitated that meeting, yes, Mr. Dash.

Mr. DASH. How did you precipitate it?

Mr. EHRLICHMAN. By calling Mr. Kleindienst at 5:15 on the afternoon of the 14th at the President's request, and advising him of my report to the President that morning, and also my interviews with Mr. Mitchell and Mr. Magruder. Then after that call, as you know, the Attorney General had an all night meeting with his U.S. attorneys and his prosecuting attorneys. He then made arrangements to see the President after church on the morning of the 15th.

Mr. DASH. And would you say that actually the President's statement on April 17 was based on the meeting with Mr. Kleindienst and with Mr. Petersen?

Mr. EHRLICHMAN. You mean exclusively?

Mr. DASH. Not exclusively but to a large part.

Mr. EHRLICHMAN. How large?

Mr. DASH. Well, you have testified frequently to questions put to you concerning your inquiry and you have indicated that you wouldn't call it an investigation.

Mr. EHRLICHMAN. Well, I am very modest about it.

Mr. DASH. All right.

Mr. EHRLICHMAN. Because I don't consider it to be a total investigation.

Mr. DASH. Right, and you said it was hearsay on hearsay and different people were coming in and you were taking notes. Mr. Kleindienst and Mr. Petersen at least, were able to give the President a fairly complete report on what they were getting in the grand jury which was testimony under oath probably and also information they were getting from the prosecutors' office.

Mr. EHRLICHMAN. Well, as I testified I think to Senator Montoya's question, there were really a number of converging lines at this point and I certainly didn't intend and, as a matter of fact, I hope I expressly disclaimed any credit for cracking the case or anything of that kind, but you had the grand jury effort, you had the prosecuting attorneys working along with the grand jury on the one hand. You had the Department of Justice effort and then you had this sort of subsidiary inquiry that I was making, all of which could be contributed to the President's fund of knowledge on this subject.

Now, the statement on the 17th was not intended by any means to cap it. The inquiry went on after that, and so I think you have to see this as a convergence of a number of different efforts that finally has brought this thing into the open.

Mr. DASH. I think you testified that you participated in the preparation of that statement on the 17th.

Mr. EHRLICHMAN. Yes, sir.

Mr. DASH. By the way, although you had left the White House, did you participate in any way in the statement of May 22 of the President?

Mr. EHRLICHMAN. No.

Mr. DASH. By the way, Mr. Ehrlichman, have you ever received either directly or indirectly, since the 1st of January 1969, any campaign funds for any purpose?

Mr. EHRLICHMAN. Any campaign funds for any purpose?

I had some expenses reimbursed at the convention which were not legitimate Government expenses and which were reimbursed to me by the Committee To Re-Elect, and I have forgotten what those were. They were quite nominal as I recall.

Mr. DASH. They were nominal.

Mr. EHRLICHMAN. Yes.

Mr. DASH. Would that be the extent of it?

Mr. EHRLICHMAN. Well, it is possible that I was still receiving reimbursement of expenses from the 1968 campaign in January 1969. I am not prepared to say without—

Mr. DASH. But if so, would that be a nominal amount or would it be a large amount?

Mr. EHRLICHMAN. No, it would be, I think, fairly extensive because at that time, you know, in the 1968 campaign I was the tour director and I was racking up a fair amount of personal expenses in that process.

Mr. DASH. I am not asking.

Mr. EHRLICHMAN. But I am just not able to recall whether those kept coming in that late or not. They were pretty slow.

Mr. DASH. I am just talking about after the 1968 campaign, 1969, thereafter. I am not asking questions.

Mr. WILSON. Mr. Chairman, I want to raise a question of relevancy with respect to this date that Mr. Dash is relying upon. May I say with great respect, I think your resolution does not reach this far, sir.

Senator ERVIN. I do not think the resolution reaches anything except the Presidential election of 1972 and any campaigns which preceded that which were relevant to the selection of candidates to run in 1972.

Mr. WILSON. Which would be the primaries.

Senator ERVIN. Yes, sir. It would be primaries or the campaigns of the candidates prior to the primary. I do not think it would reach 1969.

Mr. DASH. Well, the day after the 1968 election, weren't the funds that were received in 1969 used for the 1972 campaign? Of course, the campaign began the day after the 1968 election.

Mr. WILSON. That was not your question but I want to address myself to that question also.

Mr. DASH. All I asked was, and I think I received an answer, whether or not from 1969 onward Mr. Ehrlichman received any campaign funds.

Mr. WILSON. Well, I say—

Senator ERVIN. I do not believe we can go back, if you received any funds that were collected in the 1968 campaign that were turned over to the committee for use in 1970. I think that would be valid but—

Mr. WILSON. Let the question include those primaries then, sir. The way the question is asked—

Senator ERVIN. I do not think what he received in 1968 would be within the purview of our resolution.

Mr. WILSON. You and I agree.

Senator BAKER. Mr. Chairman, there is one other point, and I do not mean to belabor it since the Chair has already ruled, but if there is information which the staff has on some aspect of the matter in some respect, I understand it has not been brought to the attention of minority, so I would like to request that majority staff might do that before they pursue the questions.

Mr. DASH. I am not pursuing the question any further, I just asked the question.

Senator BAKER. Mr. Chairman, I reiterate my request and I am sure the chairman will agree.

Mr. DASH. Yes.

Senator BAKER. The understanding is that the information will be equally shared so if there is a point I would like to have it.

Senator ERVIN. In other words, my tentative ruling, unless it is upset by the committee, is that we have no jurisdiction to investigate anything connected with campaign funds which were left over from the 1968 election unless those funds were used in connection with the 1972 election.

Senator BAKER. The Chair has ruled and I agree with him, for whatever that is worth, and I think we ought to go ahead.

Mr. DASH. Right.

Now, in preparation for your testimony, Mr. Ehrlichman, have you had access to your records at the White House?

Mr. EHRLICHMAN. It is what I suppose you would call limited access. I can go in and look at records but I cannot copy, I cannot take notes, and I am not allowed to take them from the room.

Mr. DASH. How long did you stay in the White House after April 30 when you tendered your resignation?

Mr. EHRLICHMAN. About 2½ weeks.

Mr. DASH. Did you have access at that time to your records?

Mr. EHRLICHMAN. Yes, I did. I had—well, no, excuse me. I did not have custody of my records at that time. My custody ceased on April

30, so that then I was subject to the limitations which were then imposed by the office of the counsel there from that day forward. I literally, physically gave up custody and possession of the records on April 30.

Mr. DASH. Now, based on the President's latest statement concerning our efforts to get what might be relevant documents that are not covered by executive privilege as considered by the President, that we would have to ask for it specifically, and describe the records specifically, would you be willing to assist the committee in identifying certain of your records still in the White House which we might feel necessary to ask for by description and with specificity?

Mr. EHRLICHMAN. I would want to take counsel on that before I responded to that.

Mr. DASH. Now, have you prior to your testimony before this committee, discussed your testimony with Mr. Haldeman?

Mr. EHRLICHMAN. Discussed my testimony with him?

Mr. DASH. Yes.

Mr. EHRLICHMAN. You mean how I was going to answer questions?

Mr. DASH. Yes.

Mr. EHRLICHMAN. No. We discussed the subject matter very extensively but I have not discussed my testimony.

Mr. DASH. In other words, you discussed the subject matter of your answers but not the testimony as such?

Mr. EHRLICHMAN. Not the subject matter of my answers but the subject matter that is at issue here, I have discussed with him both during and since.

Mr. WILSON. Mr. Dash, Mr. Chairman, may I ask, would you permit Mr. Ehrlichman to describe how the preparation for this hearing was pursued and the preparation of their individual statements?

Senator ERVIN. Yes, if he wishes to make a statement on it.

Mr. DASH. That is my last question and if he wants to finish with that I have no further questions.

Mr. EHRLICHMAN. Well, as you know, several weeks ago, I would imagine 5 weeks ago or so, Mr. Haldeman moved. I have seen him to consult since then, except for perhaps a total of 20, 30 minutes maximum. My opening statement in this matter was prepared personally and without any consultation with Mr. Haldeman, as I assume his was, because I have certainly not had any consultation with him on his. I have spent virtually every day since my termination at the White House 2½ weeks after the 30th in attempting to get straight the dates, the places, the times, the persons present, the subject matters covered, and to go back into the White House records and take a look at my records, to try to refresh my recollection as to what has taken place in the premises. From time to time, prior to his departure, Mr. Haldeman and I have discussed aspects of this matter, but certainly not in terms of testimony here, only in terms of what actually took place in that research effort.

Mr. DASH. I take it that those times you did discuss it it was in anticipation of both of you appearing before this committee?

Mr. EHRLICHMAN. Mr. Dash, you are not the only girl in town. There are lots of other inquiries going on.

Mr. DASH. In anticipation of testimony to all the other girls. [Laughter.] I have no further questions, Mr. Chairman.

Senator ERVIN. Mr. Thompson.

Mr. THOMPSON. Mr. Chairman, I believe Senator Weicker has a question on this very point and I would like to yield to him at this time.

Senator WEICKER. Thank you very much.

Mr. Ehrlichman, do you assume that your testimony is in complete accord with that of Mr. Haldeman when he appears before this committee, and that there exists no conflict between both of you with regard to all the events that this committee has covered?

Mr. EHRLICHMAN. No, I do not assume that, Senator.

Senator WEICKER. Well, under those circumstances, may I ask then, how it is possible that you are both being represented by the same attorney? Is there not a potential conflict of interest in the event Mr. Haldeman does not agree with your recollection of the events?

Mr. WILSON. Mr. Chairman, may I answer that question? I am the one who is the subject of that question and I would like to answer it for Mr. Weicker.

Senator WEICKER. I would like to hear the answer because I think Mr. Ehrlichman's answer is quite clear, there is potential conflict between the two of them.

Mr. WILSON. There is no potential conflict at all.

Senator WEICKER. Your client has answered that there is.

Mr. EHRLICHMAN. I do not assume there is a coincidence.

Mr. WILSON. Senator Weicker, let me say something to you, sir. To suggest that I am involved in a matter where there is a conflict between two clients is the same as to suggest to me I am not sensitive, that I am guilty of some fraud when I sit here.

Senator WEICKER. I would have the reporter reread the question that I asked to Mr. Ehrlichman and have Mr. Ehrlichman's response to my question.

[The reporter read the question and answer requested.]

Mr. WILSON. Is that your testimony?

Mr. EHRLICHMAN. I do not make an assumption on that.

Senator WEICKER. In other words—

Mr. WILSON. May I continue now?

Senator WEICKER [continuing]. The same question your client answered. He said "No," in other words, there possibly could be a conflict?

Mr. WILSON. He did not say that at all.

Mr. EHRLICHMAN. I did not. I said I had made no assumption, that was the question you asked me.

Senator WEICKER. In other words, that it could be in conflict.

Mr. WILSON. It could be no conflict that I am aware of, sir.

Senator WEICKER. I asked your client the question.

Mr. WILSON. No; but I am entitled to answer the question because you are assailing my integrity.

Senator WEICKER. I am not assailing your integrity. I am questioning your client, and I question—let me get an answer from him again. Let me ask him the same question. Do you assume that your testimony is in complete accord with that of Mr. Haldeman when he appears before this committee?

Mr. EHRLICHMAN. I make no assumptions, Senator. I have no way of knowing whether his testimony is going to coincide with mine or not.

Senator WEICKER. So that it is possible that there would be a conflict?

Mr. WILSON. I say there is not.

Senator WEICKER. I am asking Mr. Ehrlichman. So, it is possible there would be conflict?

Mr. WILSON. We are the ones——

Senator ERVIN. Mr. Wilson.

Mr. WILSON. No, Mr. Chairman, you know, you parliamentarians have a phrase that I want to use, I want to rise to a point of personal privilege. I am a very sensitive person about this, and I don't want Senator Weicker or anybody else to insinuate that I am representing two clients who have conflict.

Now Mr. Strickler and I know definitely there is no conflict between these two gentlemen. I want to say also that the——

Senator ERVIN. I was proceeding on the theory that Senator Weicker was merely addressing this particular question to your client and not to you. Now, he did address one question to you and you denied there was any conflict of interest, and I don't believe that this is a matter that the committee ought to pursue as to the conflict of interest of lawyers.

Mr. WILSON. Thank you. Otherwise I would like to speak for about a half hour. [Laughter.]

Senator WEICKER. In other words, Mr. Ehrlichman, there is no conflict, I am asking your client, not you. Mr. Wilson, Mr. Ehrlichman, in other words, there is no conflict between your testimony and the testimony of Mr. Haldeman?

Mr. WILSON. Mr. Chairman, you told me earlier that you could control——

Senator ERVIN. Wait a minute. Let Senator Weicker complete his question including putting a question mark after it. [Laughter.]

Mr. WILSON. Where does that leave me?

Senator ERVIN. We will let your client answer it first and then if you want to address a statement to the Chair, I will be glad to receive it.

Mr. WILSON. I will address it at great length. Go ahead, Senator Weicker, ask my client a question. [Laughter.]

Senator WEICKER. That there exists, and I am asking you the question as to whether or not there exists, or could exist a conflict between both of you, you and Mr. Haldeman, with regards to the events that this committee is covering as far as testimony is concerned. Or let me repeat the question right from the outset and again from the reporter, that I have it in front of me, do you assume your testimony is in complete accord with that of Mr. Haldeman?

Senator ERVIN. Well, Senator, I don't like to make rulings on questions but I don't see how the witness can possibly answer that until Mr. Haldeman testifies.

Senator WEICKER. But unless he has talked to Mr. Haldeman.

Senator ERVIN. Yes; it would be quite evident if he and Mr. Haldeman got together and compared notes and agreed to testify in like manner, or whether they got the witness to consult with Mr. Haldeman for the purpose of refreshing his recollection in that matter, you can go into the whole area—but until Mr. Haldeman testifies I don't believe

the witness could say whether his testimony conflicts with Mr. Haldeman's testimony, which has not yet been given, but you can certainly ask him whether or not they got together and compared notes and agreed on what testimony he is going to give.

Senator WEICKER. I will be glad to ask that although I must confess that I am completely satisfied with the statement made by counsel, that there is no conflict between the testimony of Mr. Haldeman and Mr. Ehrlichman.

Mr. WILSON. I say that without qualification on the basis of more years of practice of law than any one of you sitting on that committee, including the chairman.

Senator WEICKER. That there is no conflict between the testimony of Mr. Haldeman and Mr. Ehrlichman.

Mr. EHRLICHMAN. Well, I think you are operating here on really two levels.

Senator ERVIN. Senator, I think that is prophetic power and I will have to admit we lawyers sometimes acquire some little prophetic power as to what our clients are going to testify.

Mr. WILSON. Of course, we know what the two are going to testify to and we are not aware of any material conflict.

Senator ERVIN. Yes.

Mr. WILSON. I mean there may be a little variance in incidents just like two people seeing an accident on the street. But there is no material conflict to my knowledge. I give you my professional assurance of that, Senator Weicker.

Senator WEICKER. That answers my question.

Mr. WILSON. Thank you.

Senator ERVIN. Mr. Thompson.

Mr. THOMPSON. I don't think there is any way that I can pursue a couple of lines of questioning I had in mind and still get on with the business at hand as we all want to, so I will forgo any questions of Mr. Ehrlichman at this time.

I would like to say this, and I don't know whether it is appropriate but I feel compelled to say this: That I am a lawyer and I am used to courtroom procedure, and this witness has been the subject of moans and groans from the audience, hisses, applause, sustained applause on some occasions and other demonstrations and, as far as I know, he is the only witness who has been subjected to all of these things. I think it's unfair to the witness and I don't think it does the work of this committee any good.

It's not that you, Mr. Ehrlichman, are to be treated any better than any other witness but you shouldn't be treated any worse. It doesn't go to the weight of your testimony or its credibility or whether we believe it or not, but I think it just goes to a matter of common decency and courtesy to which all witnesses are entitled. I think that situation has been rectified now, at least I hope it has, and I just wanted to state that for the last few days' testimony. I have regretted this situation and find it personally embarrassing. Thank you.

Mr. EHRLICHMAN. Thank you.

Senator BAKER [presiding]. Are there other questions of this witness?

Mr. EHRLICHMAN. Mr. Vice Chairman, I think under the rules I am entitled to make a brief closing statement and I would like to avail myself of that privilege.

Senator BAKER. You are indeed and you may proceed.

Mr. EHRLICHMAN. Thank you.

Mr. Vice Chairman and members of the committee, I prepared for this hearing with just two objectives: First to state the truth as nearly as recollection and research could enable me to do and thereby to establish the falsity of the charges made against me by your star witness. For nearly 5 days I have submitted to your cross-examination to permit a test of the truth of my testimony. In my opening statement I listed a number of questions which I asked you to inquire about because I believe they are central to this matter and because I have some information about them.

In the past 5 days a great deal of time has been spent mostly on a few of them. As a result, there is now remaining one matter which I believe is important enough to mention in passing to the committee. I did not have an opportunity to review with the committee my notes of my second interview with Gordon Strachan. I think it is important to the committee to know that as you read those notes the questions which I continually put to Mr. Strachan all the way through were: "Is there anything else? Are you giving me the whole list? Are these all the people in the White House who are involved, and have you told me everything you know about their involvement?" In other words, the list you see in the Strachan notes is intended, as I recall the interview with Mr. Strachan, to be an exclusive list, and that does not appear on the face of the notes, and I think it's important for you to have that.

My secondary objective here was to be prepared to raise a voice for the President, who is unrepresented here. As your questions developed, I had no opportunity to do so as his advocate, I only shed some light on facts which disproved a few of the false allegations which have been advanced against him here. I do not apologize for my loyalty to the President any more than I apologize for my love of this country. I only hope that my testimony here has somehow served them both.

I could not close without commenting on Gordon Strachan's answer of the other day to the question, "Do you have any advice for the young Americans who are expressing their disenchantment with government and the political process?" Gordon said, "Stay away." And your gallery laughed. But I don't think many other Americans laughed at that answer. I certainly didn't, nor do I agree with Gordon's advice. Our political system and our real governmental institutions are not just the buildings and the laws and the traditions that one sees here in the city of Washington. Our government and our politics are only as idealistic as honest as the people in those buildings who administer the laws and run the campaigns and fulfill the traditions. If some young Americans know that their ideals or ideas or motives are sounder or purer than those of the people now in politics or government, then I think Gordon should have said to them, "Come and do better. Don't stay away."

Somehow, in politics and government it seems that there is always someone to fill the job. If you don't take it, you can be sure that somebody else will. We are either going to have highly motivated able peo-

ple running the political campaigns and filling the offices in government or we will surely have seat-warmers and hacks who will fill these places and the country will be the worse for it. People must be attracted who will come here to fight for what they believe in and to work long hours to get things done. I hope that young people don't stay away. I hope they come here and apply their idealism and their enthusiasm and their high moral principles. I hope they come and test their ideas and their convictions in this marketplace. I hope they do come and do better.

With young Americans: If you come here, come with your eyes wide open. If you go to work for the President and the executive branch there are very few in the Congress or the media that are going to throw rosebuds at you. If you favor change in what our government is, and what it does in our society, you will have to fight for it. No such thing has been won here by default, at least not recently, and be prepared to defend your sense of values when you come here, too. You will encounter a local culture which scoffs at patriotism and family life and morality just as it adulates the opposite, and you will find some people who have fallen for that line. But you will also find in politics and government many great people who know that a pearl of great price is not had for the asking and who feel that this country and its heritage are worth the work, the abuse, the struggle, and the sacrifices. Don't stay away. Come and join them and do it better.

Mr. Vice Chairman, this Select Committee has an awesome responsibility to find the truth. Such a search cannot be made by one whose eyes are clouded by preconception or partisanship, it can only be found by those with open mind, free of bias and unfairness. I am confident that the truth is there to be seen. It only needs the see-ers.

Thank you, Mr. Vice Chairman.

Senator BAKER. Mr. Ehrlichman, thank you very much. As with other witnesses, I express the gratitude of the committee for your appearance and testimony. I am sure you understand as other witnesses do, that the functions of this committee are manifold, but that one of the functions of this committee is to develop what I have referred to as a definitive statement on Watergate and the other matters that were mandated to us in the Senate to inquire into.

We will take your testimony, we will weigh it against the testimony given us by other witnesses, against circumstances, against documentation, and against whatever relevant information we can find in order to arrive at the truth. As I have also indicated, as the chairman has indicated, from time to time we are not here dealing with defendants. We are going to find no one guilty or innocent of specified crimes but we are going to try to find what happened, when, and who knew about it.

You have given us a great volume of information and we thank you for it. If I may take the brief privilege of adding an addendum to your advice to young people, I, too, was concerned about Mr. Strachan's advice. I feel very certain that one of the gravest consequences of Watergate, so-called, or of these hearings would be that young people drop out or that the citizens of America are disillusioned and drop out of the political system. I very much hope they drop in and that the next and succeeding elections we have more people participating

in the elective process than we have ever had, because truly and surely the system of government in the United States is examining itself and that it approve of its strength and not of its weakness.

Are there other questions of this witness? Thank you very much.

Would counsel call the next witness?

Mr. DASH. It is Mr. Haldeman and we understand, Mr. Chairman, that the statement is just coming up now. It was given to us yesterday evening and we were just able to start reproducing it and we have part of it on its way.

Senator BAKER. Would you prefer to have a recess?

Mr. DASH. Perhaps, Mr. Chairman, you could call a short recess.

Senator BAKER. In light of that situation and in light of the fact the chairman has not yet returned from the last rollcall vote, the committee will stand in recess, subject to the call of the Chair.

[Recess.]

Senator ERVIN. The committee will come to order.

Mr. Haldeman, wait a minute. Is your counsel coming in here?

Mr. HALDEMAN. Yes, sir, he is on his way.

Senator ERVIN. Wait until counsel comes in.

Mr. Wilson, I am sorry I was over on the Senate floor voting at the time Mr. Ehrlichman finished testifying because I would like to have thanked him for his testimony in behalf of the committee.

Mr. WILSON. Thank you, Mr. Chairman.

Senator ERVIN. Mr. Haldeman, will you stand up and hold up your right hand?

Do you swear that the evidence that you shall give to the Senate Select Committee on Presidential Campaign Activities shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HALDEMAN. I do.

Senator ERVIN. Suppose you give us your full name and your address for the record.

TESTIMONY OF HARRY ROBINS HALDEMAN; ACCOMPANIED BY JOHN J. WILSON AND FRANK H. STRICKLER, COUNSEL

Mr. HALDEMAN. My name is Harry Robins Haldeman. My current address is 24 Harbor Island, Newport Beach, Calif.

Senator ERVIN. Mr. Wilson, suppose you state your name and address again for the record.

Mr. WILSON. I thought it was no secret that Mr. Strickler and I are representing Mr. Haldeman, too. The address of both of us—we are partners—is 815 15th Street Northwest, Washington, D.C.

Senator ERVIN. Now, as I understand it, Mr. Haldeman, you have a prepared statement which you would like to read before any interrogations are made, is that right?

Mr. HALDEMAN. I do, Mr. Chairman.

Senator ERVIN. You may proceed.

Mr. WILSON. Mr. Chairman, may I say—

Senator ERVIN [interrupting]. Yes, sir.

Mr. WILSON [continuing]. What I said with respect to Mr. Ehrlichman. Let the record show that he is here pursuant to a subpoena.

Senator ERVIN. That is true. He is here under compulsory subpoena process issued by the committee.

Mr. HALDEMAN. Mr. Chairman and members of the Senate Select Committee, as you know, I met voluntarily with the Senate committee staff on two occasions for lengthy interviews to answer any questions they might want to ask of me; and I requested nearly 3 months ago an early opportunity to appear before this committee.

I have also appeared before, and cooperated as fully as I could with another committee of the Senate, a committee of the House of Representatives, the U.S. attorneys, the grand jury and the attorneys taking depositions for the Democratic National Committee in their civil suit, all in regard to the matters before this committee. In all of these appearances I have never taken the fifth amendment and I have never sought immunity or any other kind of deal.

During the 3 months since I resigned from the White House staff, I have scrupulously avoided discussing any substantive aspects of the Watergate case or related matters in the press, despite enormous pressure. I have carefully avoided leaking any information, expressing any opinion or conclusion, answering any charges or commenting on any testimony by others. As I have stated countless times to reporters and to the TV cameras, I will cooperate fully with the appropriate judicial and legislative bodies involved in this case. I feel they are the proper and appropriate forums in which to present complete explanation and answer fully all questions.

On each of these occasions, I have further stated to the press that I have full confidence that when the entire truth is known, it will be clear to the American people that President Nixon had no knowledge of or involvement in either the Watergate affair itself or the subsequent efforts of a coverup of the Watergate. It will be equally clear, despite all the unfounded allegations to the contrary, that I had no such knowledge or involvement.

I had the rare privilege for 4 years of serving on the White House staff under one of America's greatest Presidents and with the most outstanding, dedicated, and able group of people with whom I have ever worked. Those who served with me at the White House had complete dedication to the service of this country. They had great pride in the President they served and great pride in the accomplishments of the Nixon administration in its first 4 years.

I cannot imagine anything more satisfying than to have had the opportunity to play a part in the first Nixon administration—which brought about the end of America's longest and most difficult war; the end of the cold war which had been a fact of life for as long as many of us can remember; the opening of communications and dialog with the leaders of the Soviet Union and the leaders of the People's Republic of China; the building of a structure that can well lead not to just one but many generations of peace; the start of the return of the power of Government to the people by revenue sharing and Federal reorganization; the whole new approach to domestic programs designed to bring those programs into line with the real needs and desires of the people. We all felt and still feel that the first 4 years was a time of laying the groundwork for even greater accomplishments in the second term and we have complete faith that that promise will be met.

One of the great tragedies of our time is that, for the moment at least, a cloud hangs over the accomplishments of the past 4 years and the promise of the next 4 years because of Watergate, its aftermath.

and related matters. This has spawned an unceasing barrage of charges and countercharges, allegations, innuendo, hearsay, rumor, speculation, hypothesis, which I devoutly hope these hearings and the concurrent work of the Justice Department and the special prosecutor will bring to an early and definite conclusion so that the Nation and its leadership can again turn their thoughts and their efforts to more productive enterprises.

During this period with its intense concentration on every aspect of the Watergate and everything related to it, the sense of proportion regarding the time period under study becomes grossly distorted. In looking at the year 1972, it is important—especially now during these hearings—to try to keep a sense of perspective as to where things fit. The harmless eye of a fly viewed under a microscope can become a terrifying object in spite of its actual insignificance. Likewise, the Watergate viewed under the microscope of this hearing and the intensive coverage of all of its aspects can become a terrifying sight if one loses track of the perspective in which it should be viewed. This is in no way an attempt to minimize the importance of the problems posed by the Watergate or the necessity to get to the truth and to take the necessary actions to deal with the facts and prevent a recurrence.

THE NIXON PRESIDENCY

During the transition period in 1968 I had the opportunity to meet with and receive some very valuable advice regarding the Office of the Presidency from a man of great experience on that subject, President Dwight Eisenhower. He made the point to me very strongly that the greatest responsibility I would have over the next 4 years would be to make sure that President Nixon had the time and the opportunity to concentrate on the few overridingly important matters that would come to his attention during that time, and that he be spared the interruptions and temptations to divert himself to day-to-day trivia that would get in the way of the really major accomplishments. President Johnson gave me exactly the same advice.

President Nixon was also a man with strong views on the Office of the Presidency, having observed the conduct of that Office for 8 years from one step away as Vice President of the United States.

Our concern was to try to set up the staff and the operation of the White House Office so that President Nixon would have the opportunity to achieve the goals that he had set for himself, to concentrate on the painstaking step-by-step actions that were required in order to achieve those goals, and to avoid being diverted by matters which could be handled as well or better by others. The staff system for the White House was set up with this objective in mind and was developed with the President's full concurrence.

The decision facing the President was whether to watch all the details, see whoever wanted to see him, read everything that was sent to him; or to delegate that authority and, by the exercise of major self-discipline, spend his time on the largest issues that confronted the people he was elected to represent. The easy decision would have been to follow the first course because that course would have made him popular and accessible and show what has been called charisma or the nice guy. President Nixon elected to follow the second

course. Some have called it isolation, but he viewed it as doing what he was elected to do. He had pledged to the American people that he would search for a generation of peace which, despite the efforts of many people, is a goal that had never been accomplished within this century. President Nixon took that pledge seriously and he has come a long ways toward achieving it. If his time during the first term had been obscured by partisan political matters, or by visiting with all of the people who wished to see him, or by reading the entire content of all of the multitude of memos written to him, there would have been no beginning of a road to a generation of peace because the one irreplaceable thing that the President had available to him—his own time—would have been taken from him.

This in no way implies that President Nixon spent 100 percent of his time on matters relating to international affairs. He carefully planned and divided his time so as to cover all of those matters that required his attention, but he carried out an extensive delegation of authority to other members of his administration and his staff to see that all matters were handled properly and thoroughly, but only those which the President himself had to deal with actually came to the President.

President Nixon also was very much concerned that he receive a wide range of views, opinions, and information as to what was being reported in the press and in the news media. Consequently, he did not limit himself to reading one or two newspapers but directed that a comprehensive summary of all news media be prepared for him on a daily basis. He read this carefully each day in addition to reading a number of newspapers. He insisted that when a matter was brought to him for decision, the full range of options and the full range of viewpoints regarding those options be presented to him rather than just the arguments of the exponents of one particular side. He saw the staff's responsibility as being that of insuring that this was always the case.

In the selection of his personal White House staff, the President emphasized the qualities of integrity, intelligence, and initiative. He urged that we bring in young people, men and women with the great energy and enthusiasm of youth to provide those qualities along with the wisdom and experience of the more senior members of his administration.

As the first term progressed, many changes were made in the staff structure and in the staff system, constantly adapting to the ongoing needs of the Office of the President. The atmosphere at the White House was one of great enthusiasm, great dedication, great cooperation, and great satisfaction as progress was made toward many of the President's goals. At the same time, there were, of course, many disappointments, and many frustrations as the progress wasn't as fast as all of us would have liked in all directions; but a review at the end of the first term provides the basis for the conclusion that the whole thing worked very well.

As we started the year 1972, the year in which the President would be up for reelection, we also approached the critical time of culmination or at least of major steps toward the accomplishment of several of the President's major goals, the end of the war in Vietnam, the opening

of relations with the People's Republic of China, the achievement of agreements to limit nuclear arms and other agreements with the Soviet Union. President Nixon's concentration was, of course, on these extremely important matters. He started the year concentrating on the planning for the trip to the People's Republic of China which took place in the latter part of February and which, because of the enormous amount of painstaking planning ahead of time, was a tremendously successful trip.

Following that trip, there were several months of intense concentration on steps to try to bring the war in Vietnam to a conclusion and to plan for the negotiations with the leaders of the Soviet Union. The months of March and April were almost totally dedicated to those two efforts with a number of other activities intervening, such as a trip to Canada to meet with the leaders of that Government.

On March 8 the President announced one of the most difficult decisions he had had to make—the decision to mine the harbors and to bomb targets in North Vietnam, and that announcement preceded by less than 2 weeks the departure for the meetings with the leaders of the Soviet Union in Moscow. Most of the month of June was occupied in activities following up on the Soviet trip, and then the President spent a good part of July at the Western White House in San Clemente where he had the opportunity for long and detailed meetings with Henry Kissinger on foreign policy, and on the negotiations to attempt to end the Vietnam war and with John Ehrlichman on initiatives in the area of domestic policy.

The first part of August was spent mostly at Camp David preparing for the acceptance speech the President was to give at the Republican Convention later that month and on developing plans and positions for the campaign that would follow. Immediately after the convention, the President went to the Western White House in San Clemente to prepare for his trip to Hawaii to meet with the leaders of the Japanese Government. He returned to Washington right after Labor Day and concentrated during September on the ongoing business of the Government with a few brief trips to various parts of the country for campaign appearances.

As the Vietnam negotiations intensified in October, they required a great amount of the President's time and attention, although he had many appointments and meetings on domestic matters in that month also; and made two or three trips for campaign appearances. Much to the consternation of the opposition and the press, he did not drop the business of Government and turn to the political campaign, but rather made the decision that he would concentrate his attention on the conduct of the office of the Presidency with confidence that the voters would make their decision on the basis of his conduct of that office.

November, December, and January were probably the 3 most demanding months of the entire time that I served in the White House. The Vietnam negotiations were up and down, on and off; and the need for daily concentration on developments in that area was intense. In addition, this was the period in which the President and a number of the key staff people were engaged in a total reorganization of the structure of the Office of the President and of the executive branch of the Government, as well as a complete review of the staffing of the

entire executive branch. There was, of course, also the need to prepare for the activities of the inaugural and for the President's inaugural address on January 20.

After the Vietnam cease-fire in late January, there was still a need for considerable attention to that area; and the work of restructuring and restaffing the executive branch of the Government, as well as developing new program approaches in the domestic area, continued at an intensive pace.

It was not until late February that President Nixon devoted any substantial amount of attention to the Watergate case and matters related to it. In the last few days of February he started a series of meetings with his counsel John Dean, originally concentrating primarily on the problems of separation of powers and executive privilege that were raised by the creation of the Senate Select Committee, and a few weeks later by the request of the Judiciary Committee, that John Dean testify in connection with their hearings on the nomination of Mr. Gray to be Director of the FBI. From mid-March through the month of April the President spent a considerable amount of time and attention on Watergate, in spite of the fact that he was also dealing with the restructuring of his branch of Government, with serious matters in the domestic economy, and meetings with a number of foreign leaders, including President Thieu of South Vietnam and Prime Minister Andreotti of Italy.

I have reviewed this picture, Mr. Chairman, as a means of pointing out to this committee, and the American people, the fact that the specifics of Watergate and the activities of the investigation following Watergate were not a principal focus of interest in the White House or by the President during the period from June of 1972 up to March of 1973. My own notes on meetings with the President during that period indicate very few and very brief references to Watergate. It was not only the principal matter occupying the attention of the President and his senior staff, but it was a matter which rose only occasionally and only briefly.

In my role as the President's chief of staff, I concentrated my attention and activities each day on those matters on which the President was concentrating his attention and activity. I did not maintain an independent schedule of appointments or activities on my own. I traveled with the President when he was out of Washington and I concentrated on those matters that were of concern to the President at any given period of time. The fact is that the Watergate case was not a matter of concentration on the part of the President at any time until March of 1973 and, therefore, was not a matter of concentration on my part either.

And the atmosphere at the White House through this period was—as it had been for the entire first term—not one of fear or repression, but one of excitement, extremely hard work, dedication and accomplishment.

WHITE HOUSE STAFF

At the outset of the Nixon administration in 1969 it was our general intention to have a group of Assistants to the President who would all function as generalists with no specific areas of responsibility, each available to move into whatever area had a need at any given point

in time. Inevitably, however, the requirements of the office caused a more specific delineation of areas of responsibility.

My role as White House Chief of Staff was administrative rather than policymaking. I worked directly with the President in the planning and execution of his daily schedule, in providing for him the information he wanted from the members of his staff and the rest of the administration, and in disseminating from him to those people his instructions and opinions. Henry Kissinger served as Assistant to the President for National Security Affairs and was responsible for the development and implementation of White House policy in the area of foreign policy, national defense and national security. John Ehrlichman, as Assistant to the President for Domestic Affairs, had similar responsibilities in the development and implementation of domestic policy. At various times during the first term there were other principal assistants to the President for specific responsibilities.

There was a very substantial difference between the roles of Dr. Kissinger in the formulation of and implementation of foreign policy and Mr. Ehrlichman in the formulation and execution of domestic policy versus my role in the administration and operation of the White House staff and the President's personal activities.

They were each department heads with areas of policy responsibility. They worked directly and frequently with the appropriate Cabinet officers and agency heads. They worked directly and frequently with the President. By delegation from the President, under clear guidelines, they acted for the President in the process of developing policy and carrying it out.

On the other hand, I worked only very rarely with anyone outside the White House staff. I spent a great deal of time with the President—and the rest of the time preparing for meetings with the President, transmitting his instructions and guidance to others for implementation, and when necessary following up on performance.

My working days were totally unstructured. I had no independent schedule. I was at the call of the President at all times.

HALDEMAN BACKGROUND

I was born, raised and spent most of my life in Los Angeles, Calif. After serving 2 years on active duty in the Navy V-12 program, I completed my college education at UCLA and then joined the J. Walter Thompson Co. Advertising Agency. I was with J. Walter Thompson for 20 years in their Los Angeles, San Francisco, and New York offices and in 1961 became a vice president of the company and manager of the Los Angeles office.

In addition to my business career and my participation in politics and government service, I spent a great deal of time in work with a number of educational and community organizations in California. Included among these activities was service as chairman of the board of trustees of the California Institute of the Arts, member of the board of regents of the University of California, member of the California Coordinating Council for Higher Education, vice president of Junior Achievement, trustee of the Coro Foundation, member of the board of directors of the Better Business Bureau and president of the

UCLA Alumni Association. Even after joining the Federal Government I had the opportunity to serve as a trustee and member of the executive committee of the Kennedy Center for the Performing Arts and as vice president of Ford's Theater Society.

My association with Richard Nixon began in 1956 when I took a 3-month leave of absence to be an advance man in his campaign for reelection as Vice President of the United States. I performed a similar function in 1958, when Vice President Nixon traveled the country on behalf of candidates for the House and Senate. In 1960 I took a year's leave of absence to serve as chief advance man and campaign tour manager in Vice President Nixon's Presidential campaign. In 1962 I again took a year's leave of absence—this time to manage Mr. Nixon's campaign for Governor of California.

In 1968 I was chief of staff for Mr. Nixon in his campaign for the Presidency and then joined the White House staff as Assistant to the President. These opportunities for community service and political participation have been very gratifying to me. The high point of my life, of course, has been the opportunity to serve for 4 years as Assistant to President Nixon and to have had a part in the truly outstanding accomplishments of his first term.

MY NOTES

Mr. Chairman, my statement and testimony before this committee will be based on my best recollection after a careful review of logs, notes, et cetera, to try to reconstruct the facts as best I can.

I am severely limited in this effort because, despite the intense focus of attention today on each minute event of last year, at the time they happened most of these things were not of great importance and were not recorded in any detail, if at all. This is especially true for the period prior to March 1973. From that time on my presidential notes regarding the Watergate case are much more voluminous because the President was then directing a great deal of his attention to the Watergate matter, whereas he had not done so earlier.

I have had access, under the supervision of a Secret Service agent, to my handwritten notes regarding conversations with the President which are in the President's files. I have not been permitted to make copies of them or to take notes from them. I have been under exactly the same restrictions as Gordon Strachan described. My files are in the same room as his. I kept no records of my own: all my records are in the President's file.

I might mention that my handwritten notes on sheets of yellow paper from June 1972 and through February 1973, make a stack about 8 inches high. All of the pages on which there is any reference or any note regarding Watergate during that period add up to less than one-eighth of an inch. In other words, my Watergate notes amount to no more than 1 percent of my total notes during the period.

Until March I made very few notes regarding conversations with John Dean because these conversations were not reported to the President, except in a general summary form. They consisted of details regarding his investigation which were of no concern to the President except, of course, the assurance always that no one in the White House

was involved. Through the period of March and April of 1973, I have quite detailed notes regarding Dean conversations because at that time he was giving me information for the President.

SECURITY PROBLEMS

Turning to the question of security problems, it has been alleged that there was an atmosphere of fear at the White House regarding security matters. I can state categorically that there was no climate of fear at all. There was, however, a healthy and valid concern for a number of matters in the general area of national security and for a number of other matters in the general area of domestic security. This was a rational concern, and it was of sufficient import to require that considerable thought be given to steps to combat the actual problems and potential dangers that existed.

With regard to leaks of information, especially in the national security area, it became evident in 1969 that leaks of secret information were taking place that seriously jeopardized a number of highly sensitive foreign policy initiatives that had been undertaken by the administration, including the ending of the war in Vietnam, the Middle East crisis, nuclear arms limitation, and the establishment of new relationships among the great powers. These initiatives were closely inter-related; leaks about any one of them could seriously endanger all of them; and such leaks were taking place.

In order to deal with these leaks, a program of wiretaps was instituted in 1969 and continued into early 1971. The President has stated that each of these taps was undertaken in accordance with procedures that were legal at the time and in accord with longstanding practice in this area. This program was authorized by the President of the United States and the wiretaps were determined by coordination between the Director of the FBI, the President's Assistant for National Security Affairs, and the Attorney General of the United States.

In 1970 the domestic security problem reached critical proportions as a wave of bombings and explosions, rioting and violence, demonstrations, arson, gun battles, and other disruptive activities took place across the country—on college campuses primarily—but also in other areas.

In order to deal with this problem, the President set up an inter-agency committee consisting of the Directors of the FBI, the CIA, the Defense Intelligence Agency and the National Security Agency. This committee was instructed to prepare recommendations for the President—which they did. The report they submitted included specific options for expanded intelligence operations and Mr. Huston, the White House staff man for this project, was notified by a memorandum from me of the approval of the President.

As has been reported, Director Hoover expressed opposition to parts of this program and as a result, the agencies were subsequently notified that the approval had been rescinded. This approval was withdrawn before the plan was implemented so the net result was that it never went into effect.

Instead of this program, an Intelligence Evaluation Committee was created in December of 1970 that included representatives of the White House, CIA, FBI, NSA, and the Departments of Justice, Treasury,

and Defense, and the Secret Service. The mission of this committee was to improve coordination among the intelligence community and to prepare evaluations and estimates of domestic intelligence.

In mid-1971 the New York Times started publication of the so-called Pentagon Papers which had been stolen from the sensitive files of the Departments of State and Defense and the CIA and which covered military and diplomatic moves in a war that was still going on. The implications of this security leak were enormous, and it posed a threat so grave as to require, in the judgment of the President and his senior advisers, extraordinary action. As a result, the President approved creation of the Special Investigations Unit within the White House which later became known as the Plumbers. John Ehrlichman was responsible for supervision of this group. Mr. Krogh and Mr. Young of the Domestic Council and National Security Council staffs were the two principal staff members. While I was aware of the existence and general purpose of this unit, I was not familiar with any of its specific activities or assignments.

Also in mid-1971, to deal with the general problem of leaks throughout Government departments and agencies—the President directed me to set up a program of spotting these leaks and reporting them to the department head involved. He announced this in a Cabinet meeting and unfortunately dubbed me with the dubious honor of lord high executioner, that was his phrase, not mine. The purpose of this program was to make department heads throughout the Government conscious of the leak problem and aware of their responsibility to deal with it in their departments. This involved no investigations on the part of the White House.

THE 1968 SURPLUS FUNDS

Turning to the 1968 surplus campaign funds, during the interim period between the 1968 elections and the start of the 1972 campaign, Herbert Kalmbach was custodian of a large cash fund which I understand was a surplus from the 1968 primary elections. In addition, he undertook to raise funds from supporters of the President to aid congressional and senatorial candidates in the 1970 elections. Also, in 1971 Mr. Kalmbach raised a substantial fund as the “start up” for the 1972 campaign.

I am not familiar with all the specifics of sources, amounts, or disbursements of these funds, although Mr. Kalmbach did keep me periodically posted on his activities in this area. As he has indicated, he looked to me—as well as to other people from time to time—for direction or approval as to the disbursement of the 1968 surplus funds.

I requested or approved use of these funds for such purposes as the continuing polling that we did during that period; for campaign support to a candidate for Governor in Alabama; and for funding Donald Segretti. It is my understanding that these funds were also used for other purposes, such as the funding of Mr. Ulasewicz—operations with which I was not familiar.

The Alabama campaign funds were in support of the candidate for the Democratic nomination for Governor who was opposing former Governor George Wallace. It was the belief of some of the President's friends and advisers on the southern political scene that Mr. Wallace

might very well become a third party candidate in 1972 and thus raise again the potential problem of an indecisive election that might be turned to the House of Representatives. They felt that the best way to avoid this eventuality was to defeat Governor Wallace in his bid for the gubernatorial nomination in Alabama. This was the reason for providing campaign financial support to his opponent.

SEGRETTI

Turning on the Segretti matter. Early in the precampaign period I agreed with an idea that was suggested to set up a man functioning independently of the White House, the Committee To Re-Elect and the National Committee for the purpose of generating for our side the same kind of campaign activities that were so ably carried out over the years for Democratic candidates and in 1972 for Senator McGovern by Dick Tuck, a man who has been widely praised by political writers as a political prankster, whose basic stock in trade is embarrassing Republican candidates by activities that have been regarded as clever and acceptable parts of our political tradition.

The repertoire of the political prankster includes such activities as printing up embarrassing signs for the opponent, posing in trainman's clothes and waving the campaign train out of the station, placing an agent on the opponent's campaign train to produce witty newsletters mocking the candidate, distributing opposition signs at rallies for use by members of the crowd, encouraging band leaders to play rival songs at rallies and so forth.

The activities we had in mind, and for which we drew careful boundaries, specifically excluded anything remotely connected with the Watergate type of activity.

Moreover, the pranksterism that was envisioned would have specifically excluded such acts as the following: Violent demonstrations and disruption, heckling or shouting down speakers, burning or bombing campaign headquarters, physical damage or trashing of headquarters and other buildings, harassment of candidates' wives and families by obscenities, disruption of the National Convention by splattering dinner guests with eggs and tomatoes, indecent exposure, rock throwing, assaults on delegates, slashing bus tires, smashing windows, setting trash fires under the gas tank of a bus, knocking policemen from their motorcycles.

I know that this committee and most Americans would agree that such activities cannot be tolerated in a political campaign. But unfortunately the activities I had described are all activities which took place in 1972—against the campaign of the President of the United States by his opponents. Some of them took place with the clear knowledge and consent of agents of the opposing candidate in the last election; others were acts of people who were clearly unsympathetic to the President but may not have had direct orders from the opposing camp.

So far there has been no investigation of these activities and very little publicizing of them, either those which were directly attributable to our opponent or those which certainly served our opponent's interest but did not have his sanction.

There is no question that the 1972 campaign was not a classic in decorum—for either side. In any event, having agreed to the suggestion of a “Dick Tuck for our side,” I was told by Dwight Chapin and Gordon Strachan that they had a former college friend they felt would be a good man for this project. They may have told me that his name was Don Segretti, but it would have meant nothing to me. I have never met or had any personal communication with Mr. Segretti.

I agreed that if this man wanted to take on this activity, Herbert Kalmbach should arrange for his compensation and expenses from the 1968 campaign fund surplus.

It was my clear understanding that Segretti would act independently and on his own initiative within the broad guidelines outlined above. It was also my clear understanding that he was to engage in no illegal acts. Mr. Strachan has told me that he was so advised and that he understood that. I had no specific knowledge of Segretti’s activities or the details of how or with whom he worked. I do not believe that there was anything wrong with the Segretti activity as it was conceived. I have only limited knowledge, and that acquired only lately, as to how it was actually carried out.

If, as alleged, he or those under his direction were responsible for the letter which falsely defamed Senators Muskie and Humphrey, then, on behalf of everyone associated with the Nixon campaign, I would like to and do apologize to both of those men. That act was clearly outside the bounds within which he was to work.

THE CAMPAIGN

The President and all of us at the White House were determined that the campaign organization and operation should be set up outside of and independent of the White House and this was the reason for the development of the Committee To Re-Elect the President. The committee operated autonomously under the direction of John Mitchell and later Clark MacGregor but, of course, with close liaison and communication with the White House at many levels.

The President looked to me as his basic contact with the campaign organization, and I maintained communication with John Mitchell in this regard until July 1972, and then with Clark MacGregor.

I did not function as the White House liaison with the Committee To Re-Elect the President. This function was handled by various people at various levels with regard to specific areas of projects. For example, John Dean on legal matters, John Ehrlichman and his staff on substantive domestic policy, Chuck Colson on group support, et cetera. I had no official relationship with or position on the Committee To Re-Elect the President or the finance committee.

Gordon Strachan on my staff handled the day-to-day liaison with the committee for me and virtually all my contact with the committee, except for that with Mitchell or MacGregor, was through Strachan. He received copies of committee materials and memorandums, sat in on many of their meetings and stayed in touch with key people. I met with Strachan only about once every week or two during the campaign.

Strachan periodically sent me general information on campaign planning, organization and activities. He sent me from time to time, the overall budget and various campaign materials. This was primarily

for information purposes and usually took the form of a summary memorandum, backed up by a huge amount of supporting material which I rarely read.

In the specific case of advertising and promotional materials the standard procedure required a final signoff by me before the ads or materials were considered approved. Thus, in this particular area I did, in effect, exercise approval authority but even here I did not have control over either the personnel or the policies involved in developing the material. I only had a final signoff on the end product.

Strachan also routed these materials to others in the White House who were concerned with them.

I also had a particular interest in polls and in scheduling and paid more detailed attention to these areas.

I think it was very clear to all concerned that the committee was running the campaign, not the White House.

I do not believe I had control over any funds at the committee nor did I exercise any authority or direction as to the utilization of funds, except in a general sense. I never signed a campaign check.

I was, to some degree, involved in the decision process regarding funds to be used for advertising and polling. The committee also allocated funds to pay for expenses incurred by the President or the White House that were clearly campaign expenses as contrasted to Government expenses. This would include such things as cost of campaign travel, advance men, et cetera.

Some indication of my role in the campaign may be found in the fact that I visited the committee headquarters only once during the entire campaign period and that was on the occasion of the President's visit to see the headquarters and meet the campaign workers.

Also, I had very few meetings with any members of the staff of the Committee To Re-Elect the President, except those with John Mitchell which were on a frequency of about once a week during the time he was campaign director. In addition to that, I did sit in the semiweekly campaign review meetings held in John Ehrlichman's office and, of course, as has been indicated, Mr. Mitchell and Mr. MacGregor sat in the regular morning White House staff meeting so that there could be full coordination between the White House and the committee on overall strategy.

My contact with the campaign, in other words, was through fairly infrequent meetings with Mr. Mitchell and fairly infrequent meetings with Gordon Strachan of my staff; but I kept in general touch with campaign activities through Strachan's summary memorandums and the meetings described above.

THE \$350,000

Prior to the April 7 date on which the new campaign spending legislation took effect it was agreed by Mitchell, Stans, I believe Mr. Kalmbach and me that \$350,000 of the 1968 surplus cash funds should be set aside to cover possible needs for special private polling by the White House apart from the regular polls conducted by the committee. This was in anticipation of a possibly hard-fought close election.

I understand from Gordon Strachan that he received the cash from Hugh Sloan on April 6. He, in turn, arranged to have this cash held

in a safe deposit box or safe by another individual outside the Government. It is my understanding from Strachan that this transfer was made immediately and the entire \$350,000 was placed in safekeeping outside the White House.

I did not feel we should keep such a large amount of cash at the White House, nor did I feel it was a good idea for it to be in the physical custody of a member of the White House staff which was why these arrangements were made. I never at any time saw or handled the currency, and I must rely on Strachan's reports to me as to how it was handled.

I have been informed by Strachan that there was one withdrawal in April or May of 1972 of \$22,000 to pay for some advertising not directly related to the election campaign. This was at the request of Dick Howard of Chuck Colson's office. I think Strachan said the money was delivered directly to the advertising agency.

The balance of \$328,000 was not used. I instructed Strachan after the election in November to turn over the unused funds to the committee since the White House had no further need for them. I told him to work out with John Dean the means of doing this. Strachan has informed me that the funds were turned over in January 1973, although he incurred some difficulty in doing so after he took possession of the funds on November 28, 1972.

In December I became aware, probably via Dean, that there was some difficulty in turning over the cash to the committee, presumably because it posed reporting problems.

At a later time, Dean mentioned to me the committee's need for funds for legal and family support for the Watergate defendants. I suggested to Dean that he try to work out a way of solving both the problems of our desire to deliver funds to the committee and the committee's need for funds.

Dean later told me that he had worked this out and that part of the cash, I believe \$40,000, could be delivered immediately to the committee via Fred LaRue. He had Strachan do this, I am told, and several days thereafter, Dean had Strachan deliver the balance to LaRue.

To sum up: After my original instruction to Strachan to transfer the money to the committee, my involvement in the transfer of the funds was entirely through John Dean. He told me of the problem in transferring the \$350,000 to the committee. He told me he had worked out the problem. He told Strachan how, when, and to whom to make the transfer. He told me the transfer had been made.

He did not, at any time in this sequence, advise me or imply that the transfer itself or the purpose of the transfer was to buy the Watergate defendants' silence or that it was in any way illegal or improper.

It is my understanding, that all this took place in the period of November to January, but I am not sure of the timing.

I have no recollection of any knowledge of the reported transaction on November 28 when Dean had Fred Fielding of his office pick up \$22,000 in cash from Mr. Stans, ostensibly for the purpose of replacing the \$22,000 that had been expended from the \$350,000 in April.

I do recall that one of Dean's problems in the process of transferring the \$350,000 to the committee was the fact that \$22,000 had been

disbursed. So it is quite possible that he did have it replenished prior to having the cash turned over to LaRue, but I do not believe that he ever reported this fact to me.

In fact, Gordon Strachan's report to me in April of 1973 was that the \$22,000 had not been replaced and that he had delivered only \$328,000 to Mr. LaRue and not the full \$350,000. However, Strachan also told me after his grand jury appearance that he had told them, the grand jury, that he had delivered \$350,000. I said that was contrary to what he had told me and he said he had made a mistake at the grand jury. I urged him to correct it, if that was the case. He told me later he had called Mr. Silbert about the mistake and was told he could correct it before the grand jury. When he appeared at the courthouse to do so, the U.S. attorneys would not let him do it, and instead warned him he had committed perjury, was in serious trouble, should start preparations to go to jail, and should hire a lawyer.

WATERGATE

I had no knowledge of, or involvement in, the planning or execution of the break-in or bugging of the Democratic National Committee headquarters.

To the best of my knowledge, I did not see any material produced by the bugging of the Democratic headquarters.

After the June 17 break-in, I asked Gordon Strachan whether he had had any knowledge of such an operation. He said he had not; but that he realized in thinking back that there had been three "intelligence reports" received by him identified by the code name "Sedan Chair" that said something to the effect that "confidential sources report that * * *". He said he did not at the time know the identity of the confidential sources. He realized after the June 17 break-in, thinking back, that these reports could have been based on the Watergate or some other wiretap source.

I have absolutely no recollection of seeing any such report and it is quite likely that I did not see it even if it was included in a Strachan transmission to me since I rarely, if ever, read through or even looked at all of the materials that he sent in to me in these reports.

I do not recall ever seeing any material identified by the name "Gemstone."

I have no recollection of giving Mr. Strachan instructions to destroy any materials, nor do I recall a later report from Strachan that he had done so or that the files were clean.

Mr. Strachan has made clear in his testimony that he destroyed materials not because he thought the contents concerned criminal activity, but because he felt if they ever became public they would be politically embarrassing. He confirmed that he had reread the contents many times and that they did not suggest any illegality or criminal activity; they suggested matters which, if they became public, would be politically embarrassing.

I should point out that on two occasions in April 1973—once to me, before his grand jury appearance and the other to John Ehrlichman—Strachan listed the areas of what he considered to be tough questions or trouble spots. On neither of these occasions did he men-

tion to either of us that he had been instructed to destroy any materials or make sure files were clean.

I think the effort to bring in my April 4 meeting with John Mitchell as in some way significant with regard to intelligence is a little far-fetched. By his testimony, Strachan doesn't know what was discussed at that meeting. All he says is that, in routine fashion, he put an item on the talking paper regarding the adequacy of intelligence. As a matter of fact, the meeting with Mr. Mitchell that day was in connection with a meeting of Mitchell and me with the President. My notes taken at the meeting with the President indicate the discussion covered the ITT-Kleindienst hearings and a review of Mitchell's plans for assigning regional campaign responsibilities to specific individuals. They indicate no discussion of intelligence.

DEAN INVESTIGATION

John Dean, in his Camp David report—which is now exhibit 34-43* before this committee—says that when he arrived in Washington on Sunday afternoon, June 18, he realized that the President would have to know everything that he could find out. He realized at that point that he would be asked to assemble all of the facts so that the White House could be fully informed as to what had transpired and how it would affect the President, but having been on an airplane for approximately 25 hours he did nothing further that evening.

The next morning, after reading all of the news accounts of the Watergate incident, he spoke with John Ehrlichman, who instructed him to get the facts together and report to him. He then called the Attorney General to get what facts he knew. He called Gordon Liddy and met with him. Dean asked Liddy if anyone at the White House was involved and he told him no.

During the days and weeks that followed, Dean discussed the incident with everyone who he thought might have any knowledge or involvement.

The source of these facts is John Dean's report, or the start of it, which he wrote at Camp David in March of this year.

There is absolutely no question in my mind, or, I'm sure, in the minds of anyone at the White House, or at the Justice Department, that John Dean was in fact conducting an investigation for the White House regarding the Watergate as it might involve the White House. It is inconceivable to me that there could be any doubt in Dean's mind.

Dean moved in immediately after the incident as sort of the Watergate project officer in the White House. This was in keeping with our usual procedure; the responsibility was his and he had the authority to proceed. Dean kept Ehrlichman and me posted from time to time on developments and, through us, the President. He apparently did not keep us fully posted and it now appears he did not keep us accurately posted.

The President, Ehrlichman and I were very much involved in many other vital matters through this entire period and we made no attempt to get into the details of, or in any way take over, the Watergate case.

*See Book 3, p. 1263.

The view of all three of us through the whole period was that the truth must be told, and quickly; although we did not know what the truth was. Every time we pushed for action in this direction we were told by Dean that it could not be done. His concern, as I understood it, was that the case was complex, it involved rights of defendants and other legal complexities, the facts were not clear, and that nothing should be done publicly.

As long as we were confident that the facts he told us were correct, we had to agree with this, since there was no proof of any involvement of higherups at the committee, and any premature speculation regarding any such involvement would have been unfair and damaging. Especially since the top officials at the committee had denied any involvement.

Thus, as it now appears, we were badly misled by one or more of the principals and even more so by our own man, for reasons which are still not completely clear.

At no time did I give Dean any instructions to cover up anything in this case. I did, however, occasionally receive his verbal reports of the facts and his intended actions and relayed these to the President. None of these reports concerned a coverup.

I had no personal motivation to cover up anything because I had no personal involvement and I knew the President had no involvement. I understood and believed that no one else in the White House was involved in the Watergate planning and break-in, and I still understand and believe that. It was obvious that some people at the committee were involved, but I had no idea who, or how far up, and I still don't—because I don't know now whom to believe. I may add that until the recent period both John Mitchell and Jeb Magruder denied any Watergate involvement.

The President raised questions as to the facts of Watergate from time to time during the period of June through the election. His interest consistently was to get the facts and get them out. He had some concern, especially in the early stages, regarding the possibility of compromising national security and an interest, therefore, in seeing that the investigation was thorough with regard to Watergate, but that it was limited to Watergate and not extended into earlier unrelated national security activities of some of the people involved.

Throughout this period, Dean assured us that there was absolutely no evidence that anyone in the White House had been involved in Watergate in any way. He was sitting in on FBI interviews; reviewing FBI reports; he was in constant communication with officials of the Justice Department and the reelection committee; and was clearly staying closely in touch with all facets of the investigation and related matters.

On or about August 27, the President instructed me to ask Mr. Ehrlichman to give to Pat Buchanan the information that Buchanan would need for preparing the President's briefing book for an upcoming press conference on any questions that might arise regarding Watergate. I passed this request on to Ehrlichman and assumed that he carried it out. On August 29 the President had a press conference at which he stated the Dean investigation indicated that no one in the White House or in the administration presently employed had

been involved in Watergate. I was not at all surprised to hear the President say this at the press conference since it was thoroughly consistent with everything that Dean had told me, and I, therefore, find it hard to understand why Mr. Dean now professes to have had such great surprise when he heard this statement.

COVERUP

In these hearings and in the general discussion of Watergate, the word "coverup" has come to have a broad and very ill-defined meaning. As John Dean said, the coverup had a broad range. Anything that might cause a problem came within the coverup.

Definition by usage has now come to connote illegal or improper activities—although some steps were taken to contain the Watergate case in several perfectly legal and proper aspects.

One, as the President has stated, was to avoid the Watergate investigation possibly going beyond the facts of the Watergate affair itself and into national security activities totally unrelated to Watergate.

Another was to avoid or at least reduce adverse political and publicity fallout from false charges, hearsay, and so on, arising from various activities in connection with Watergate, such as the Justice Department investigation, the Democratic National Committee suit, the Common Cause suit, the Patman hearings, and the Ervin committee hearings.

A third was concern for distortion or fabrication of facts in the heat of a political campaign that would unjustly condemn the innocent or prevent discovery of the guilty.

The containment effort, as I would use the term, did not contemplate or involve any acts in obstruction of justice. To the contrary, while hoping to contain the Watergate inquiry to the facts of Watergate, there was a concurrent effort to try to get the true facts of Watergate and get them out to the public. The President frequently cautioned against any coverup of Watergate or even the appearance of a coverup.

On the basis of testimony now before this committee, it appears that there also was an effort to cover up, as well as to contain. This coverup appears to have involved illegal and improper activities, such as perjury, payments to defendants for their silence, promises of Executive clemency, destruction of evidence, and other acts in an effort to conceal the truth regarding the planning and commission of crimes at the Watergate.

The critical question then becomes the determination of who committed these acts, who directed them, who was aware of them.

I committed no such acts and directed no such acts and I was aware of no such acts until March of this year, when the President intensified his personal investigation into the facts of the Watergate. I am convinced that the President had no awareness of any such acts until March of this year.

The question is asked: "How could the President not have known?" Very easily. Reverse the question. How could the President have known?

Only if he were directly involved himself or if he were told by someone who was either directly involved or had knowledge. The fact

is that the President was not directly involved himself and he was not told by anyone until March, when he intensified his own investigation. Even then, he was given conflicting and unverified reports that made it impossible to determine the precise truth regarding Watergate or the coverup and, at the outset at least, he was relying primarily on one man, John Dean, who has admitted that he was a major participant in the illegal and improper coverup, a fact unknown to the President until March 1973.

Any attempt on my part at this time to try to identify those who participated in, directed, or knew of the illegal coverup would of necessity be based totally on hearsay.

CONTAINMENT

There was a concern at the White House that activities which had been in no way related to Watergate or to the 1972 political campaign, and which were in the area of national security, would be compromised in the process of the Watergate investigation and the attendant publicity and political furor. The recent public disclosure of the FBI wiretaps on press and NSC personnel, the details of the Plumbers operations, and so on, fully justifies that concern.

As a result of this concern and the FBI's request through Pat Gray to John Dean for guidance regarding some aspects of the Watergate investigation, because of the possibility of CIA involvement, the President directed John Ehrlichman and me to meet with the Director and Deputy Director of the CIA on June 23. We did so and ascertained from them that there had not been any CIA involvement in the Watergate affair and that there was no concern on the part of Director Helms as to the fact that some of the Watergate participants had been involved in the Bay of Pigs operations of the CIA. We discussed the White House concern regarding possible disclosure of non-Watergate-related covert CIA operations or other nonrelated national security activities that had been undertaken previously by some of the Watergate participants, and we requested Deputy Director Walters to meet with Director Gray of the FBI to express these concerns and to coordinate with the FBI, so that the FBI's area of investigation of the Watergate participants not be expanded into unrelated matters which could lead to disclosures of earlier national security or CIA activities.

Walters agreed to meet with Gray as requested. I do not recall having any other communication, or meeting, with Walters, Helms, or Gray on this subject. I did not, at this meeting, or at any other time, ask the CIA to participate in any Watergate coverup, nor did I ever suggest that the CIA take any responsibility for the Watergate break-in. I believe that the action I took with the CIA was proper, according to the President's instructions, and clearly in the national interest.

There were a number of newspaper stories and allegations raised during the period following the Watergate break-in that posed new questions regarding the facts of Watergate or related matters. Whenever any such questions arose, the President would again ask that the facts be ascertained and made known publicly as completely and quickly as possible, but there always seemed to be some reason why

this could not be done. There was no effort on my part to direct my personal attention or take any personal action on these matters because the FBI and the Justice Department were responsible for, and were conducting, an extremely extensive investigation and because Mr. Dean was responsible for White House liaison with all aspects of the investigation. I knew John Dean to be an extremely capable, thorough, hard-working, and intelligent man and I had full confidence, as did the President at that time, that Mr. Dean was in fact carrying out this responsibility diligently and thoroughly.

There is another aspect to the containment area. It must be recognized that this was the period of a political campaign. There were a number of attacks on the administration, the President, and the reelection committee arising out of Watergate and allegations in connection with it. These attacks were, of course, not helpful to the reelection cause and there was a continuing effort to avoid any false accusations or allegations from being made in the public press and to answer any that were.

There was also frequent discussion of the need for counterattack—the need to point out that while Watergate was not in any way an acceptable or excusable action, it also was not the only improper action by the two sides in that particular election campaign. I have cited earlier some examples of activities that were carried out against the President's reelection effort. Many of the campaign strategists felt that Watergate was getting all of the attention and the improper activities on the other side were being ignored.

While there is no effort and no intent to try to impede the legitimate investigation of the facts regarding Watergate and any other criminal or improper activities, there was a concern about the exploitation of unproved charges and the sensationalizing of required appearances by various people for depositions in the civil suit, et cetera.

DEFENSE FUNDS

I was told several times, starting in the summer of 1972, by John Dean and possibly also by John Mitchell, that there was a need by the committee for funds to help take care of the legal fees and family support of the Watergate defendants. The committee apparently felt obliged to do this.

In March 1973, Dean told me that at some point in 1972 he, at Mitchell's suggestion, had asked me if it would be OK for him to contact Herb Kalmbach to ask him to raise some such defense funds. He says I agreed. He also says that he checked Ehrlichman on the same point. I do not recall such a request. I should also point out that at sometime Dean has said that he checked with both Ehrlichman and me on this point and at other times he has said only that he checked with Ehrlichman.

Later in March 1973, Dean raised the point that there was a potential problem with relation to the funds for defendants. He described this as a possible political embarrassment, and indicated that it might even become a legal problem. The problem would arise if it was determined that these funds had been used to induce the defendants to refuse to testify.

I emphasized my clear understanding that the purpose of the funds, as described to me by Dean, was for legal fees and family support; and that I had understood from Dean that both Mitchell and Dean felt this was a proper and important obligation to the defendants.

Since all information regarding the defense funds was given to me by John Dean, the counsel to the President, and possibly by John Mitchell, and since the arrangements for Kalmbach's collecting funds and for transferring the \$350,000 cash fund were made by John Dean, and since John Dean never stated at the time that the funds would be used for any other than legal and proper purposes, I had no reason to question the propriety or legality of the process of delivering the \$350,000 to the committee via LaRue or of having Kalmbach raise funds.

I have no personal knowledge of what was done with the funds raised by Kalmbach or with the \$350,000 that was delivered by Strachan to LaRue.

It would appear that, at the White House at least, John Dean was the only one who knew that the funds were for "hush money," if, in fact, that is what they were for. The rest of us relied on Dean and all thought that what was being done was legal and proper. No one, to my knowledge, was aware that these funds involved either blackmail or hush money until this suggestion was raised in March 1973.

MAGRUDER

To the best of my recollection, I had no meetings or discussions with Jeb Magruder regarding Watergate after our phone call of June 18, 1972, which has already been reported, until February 14, 1973. A review of my log confirms that I had no meetings at all with Magruder in 1973 until February 14.

We did meet on February 14 for about an hour and a quarter at Mr. Magruder's request in my office. The purpose of the meeting was to discuss his plans for the future. He felt that the Watergate matter was now settled as far as he was concerned; that his work at the inaugural committee was done and that it was time for him to make his future plans. He said he was interested in the possibility of running for office in California and he was also interested in the possibility of returning to a Government post in Washington. He was especially interested in a White House position in connection with the bicentennial. I advised him that there was no possibility of a Presidential appointment, or a White House position, until all of the Watergate matters had been cleared up, including the Senate hearings, which were, at that time, about to get underway.

I believe that, at this time, he had just returned from a trip to California where he had taken soundings as to the political possibilities and his job opportunities. I urged him, if he was interested in California politics, to go to work in private business out there and get himself reestablished in the State and then go into politics at a later point. I recommended that he not consider coming back into the Federal Government because if his interests were in California he now had the need to reestablish himself there. All of this was in the nature of political advice to a man who indicated his interests in running for political office.

He said, however, that all of the people he had talked with in California had urged him to go back into Government for a while; that he had strong family reasons for wanting to stay in Washington because his children were well established in the schools here; and that he had lost some of his interest in running for office in California and was more interested in the idea of staying in Washington. Since the Presidential appointment or White House post was out of the question, I suggested that he look into other Government possibilities and that he work with Jerry Jones and the White House personnel office in that regard.

I met with Magruder again on March 2 (I believe again at his request), at my office, with John Dean also present, for about an hour. At this meeting we reviewed the same general subjects we had discussed on February 14, and I gave him a list of jobs in the Government that had been developed by the personnel office. He expressed interest in one of the jobs on the list, a post at the Department of Commerce, and he subsequently did take that post.

I do not recall any discussion of any of the particulars of the Watergate matter or the so-called coverup—other than what I have already indicated regarding his feeling that the matter was now behind him.

I feel certain that there was no such discussion because had he told me the kinds of things that he has indicated to this committee that he told me regarding perjury, et cetera, I would have remembered them clearly and I would have done something about them.

Mr. Magruder has stated that he met with me in early January of 1973, before the inaugural, although he was unable to specify a date.

Mr. Dean, on the other hand, has indicated in his testimony that I met with Mr. Magruder in late January.

I do have a vague feeling that I talked with Magruder or at least knew about his plans prior to his trip to California, which I believe was in early February. I cannot recall any specific conversation or meeting. My feeling may arise from the fact that apparently John Dean talked with me in late January about Magruder's plans for going into politics in California and his plans to make a trip out there. Mr. Higby has told me that Mr. Magruder did request a meeting in January, but that I was unable to schedule one. I did later agree to such a meeting but when he called Magruder to set it up, Magruder had already left for California. It is possible that Magruder told Higby of his California plans and Higby relayed them to me.

Magruder's recollection of the substance of the alleged January conversation is in many respects very much along the lines of my recollection of our conversation on February 14, and I have the feeling that we are dealing here with a simple error in recollection of specific dates, which is certainly understandable.

At no meeting with Magruder did he raise with me a monolog as he has described, laying out the true facts or claiming that he had committed or was going to commit perjury or that there had been any other illegal coverup activities undertaken in connection with the Watergate investigation.

I should also explain, Mr. Dash, that my outline of the Magruder meetings of February 14 and March 2 is somewhat different than the review I gave the committee staff when I met with them late into the

evening of June 14. That meeting was immediately following Mr. Magruder's testimony before the full committee in which he had referred to a January meeting. Having heard that reference for the first time, I made an effort to try to recall the facts of my meetings with Mr. Magruder as best I could. I knew from my log that I had had meetings with him on February 14 and March 2, and I had a general feeling that I had met with him once before he went to California and once after he came back. So I assumed that that was the case and reconstructed the two meetings to the best of my recollection based on that premise. I found out later that Mr. Magruder's trip to California was apparently in early February; therefore, our meeting on February 14 was after his return from California and the meeting on March 2 was a followup of the February 14 meeting. I hope this correction is helpful.

On April 14, 1973, I phoned Magruder at the President's request and asked him to meet with Ehrlichman that day. I have turned over to the committee a tape recording of this conversation. At the time we talked, Magruder had already decided to tell the full truth, and in fact, I believe, had done so in a meeting with the U.S. attorneys. During the phone conversation, Magruder said that his testimony had not implicated me. He also said that one of the problems he was facing was that he had committed perjury when he testified before the grand jury and the trial. I responded that I did not know anything about that, and he replied that even if I didn't, he did. He did not contradict me, thus showing that, at that point in time at least, I did not know he had perjured himself.

SEPTEMBER 15 MEETING

I was in meetings with the President all afternoon on September 15, 1972. At the end of the afternoon, the President had John Dean come in. This was the day that the indictments had been brought down in the Watergate case, and the President knew John Dean had been concentrating for a 3-month period on the investigation for the White House. I am sure, therefore, that the President thought it would be a good time to give Dean a pat on the back.

There was no mood of exuberance or excitement on the President's part at the time the indictments were brought down. He does not take joy from the misfortunes of other people, and I don't think he found it very pleasant that the people had been indicted. Naturally, however, it was good news as far as the White House and the administration were concerned that when the indictments were brought down, after a thorough investigation, it had been established there was not any involvement by anyone in the White House. This confirmed what Mr. Dean had been telling us, and we had been reporting to the President over the period of the past 3 months.

As was the case with all meetings in the Oval Office when the President was there, this meeting with Mr. Dean was recorded. At the President's request, I recently reviewed the recording of that meeting—at which I was present throughout—in order to report on its contents to the President. I should interject here that I also reviewed the recording of the March 21 meeting of the President, Mr. Dean, and myself for the same purpose, and I have made reports to the President on both of those meetings. I have not at any time listened to any other record-

ings of the meetings in the President's Office or of the President's phone calls.

The President did not open the meeting of September 15 with the statement that, "Bob has kept me posted on your handling of the Watergate," or anything even remotely resembling that. He said, "Hi, this was quite a day, you've got Watergate on the way," or something to that effect. Dean responded that it had been quite a 3 months and reported to the President on how the press was handling the indictments and, apparently, a Clark MacGregor press conference.

The discussion then covered the matter of the new bug that had recently been discovered in the Democratic National Committee headquarters and the question of whether it had been planted by the DNC and the matter of Mr. Nixon's campaign being bugged in 1968 and some discussion of whether to try to get out evidence of that. There was some discussion about Judge Richey hearing the civil case and a comment that he would keep Roemer McPhee abreast of what was happening. I don't recall any comment about the judge trying to accommodate Dean's hopes of slowing down the suit, but there was some discussion about the problem of the civil case depositions interfering with the criminal prosecution—apparently as a result of a conversation between Judge Richey and Assistant U.S. Attorney Silbert.

Dean indicated that the indictments meant the end of the investigation by the grand jury and now there would be the GAO audit and some congressional inquiries, such as the Patman committee, but he assured the President that nothing would come out to surprise us. In other words, there was apparently no information that would be harmful that had not been uncovered already. The President did at that point commend Dean for his handling of the whole Watergate matter, which was a perfectly natural thing for him to do. Dean reported that he was keeping a close eye on possible campaign law violations by the opposition; said there were some problems of bitterness at the reelection committee between the finance committee and political groups; and said he was trying to keep notes on people who were emerging out of all this that were clearly not our friends.

There was, as Mr. Dean has indicated, quite a lengthy discussion of the Patman hearings and the various factors involved in that. There was some discussion of the reluctance of the IRS to follow up on complaints of possible violations against people who were supporting our opponents because there are so many Democrats in the IRS bureaucracy that they won't take any action.

There was a discussion of cleaning house after the election, moving quickly to replace people at all levels of the Government. The meeting closed, as I recall, with a fairly long philosophical discussion.

I totally disagree with the conclusion that the President was aware of any type of coverup and certainly Mr. Dean did not advise him of it at the September 15 meeting.

SENATE COMMITTEE

On February 7, 1973, the Watergate case moved into a new phase with the establishment of the Senate Select Committee. The announcement of the plans for the Senate probe was the reason for holding a weekend meeting, February 10 and 11, in southern California with Mr. Ehrlichman, Mr. Dean, Mr. Moore, and myself. These meetings have

been thoroughly reported and I would concur in Mr. Moore's description of them as sort of brainstorming sessions regarding the whole range of questions of strategy regarding the Senate hearings, a review of possible problems, and general discussion of how to deal with a number of new factors.

It was obvious that the Senate hearings would generate massive publicity. In calling and hearing a wide range of witnesses one at a time on national television there would be a lot of charges and hearsay with no opportunity to answer them, in the same news cycle at least, and there was of course the real concern that the committee hearings might evolve into a very partisan exercise.

There was a freewheeling discussion of these various possibilities and problems and of ways and means of trying to deal with them or counteract them.

I feel that Mr. Dean in his statement to the committee has, in a number of instances, substantially misinterpreted the intent or implications of things that might have been said at the meeting.

Also I believe he has overlooked one of the principal purposes of the meeting, which was a discussion at great length of how to develop some way to learn the entire Watergate story—including the other activities that were by then bunched together as Watergate—and get it out in its totality and accurately. This was considered as one of the best ways to counteract the potential of adverse publicity arising from a drawn-out public hearing. The feeling was that putting all of the facts out, in one place, at one time, would give the American people a more accurate picture of the truth than would the drawn-out process of hearing one witness at a time over an extended period.

Another objective, which was the President's objective, was to try to work out ways and means by which the facts of Watergate or any testimony that could be provided by anybody in the White House, who had any knowledge, which would be of interest to this committee could be provided in the most complete form but without getting into the problem of the separation of powers and executive privilege.

I don't recall any discussion of the question of raising money, but I am sure that if there were any, it was in the form that Mr. Moore described; that is, a very incidental item occupying only a few minutes in a series of meetings that lasted for many hours. It was not a principal point of discussion. There was no discussion of a coverup of Watergate during these meetings.

Dean put into evidence as exhibit No. 34-34* an agenda he says was requested by me for a meeting with the President as a followup to La Costa on February 19 or 20. He seems to feel that this is a very significant document that is self-explanatory as evidence of a continuing coverup. I completely fail to see it that way.

There were five items on the agenda. First, a meeting of Senator Baker with the President which, it was my understanding Senator Baker had requested, and which seems to me to be perfectly natural as one step to be taken in working out the various problems regarding White House staff appearances at the Senate committee hearings, et cetera. Second, the question of submitting Maurice Stans' name for confirmation to the Senate for a post requiring such confirmation. This was a step designed to deal with two questions, first to give Mr. Stans

*See Book 3, p. 1243.

the opportunity to reenter Government at a suitably high level and, second, to provide him with the opportunity in a very short period of time to appear publicly and under questioning, to clear up all charges regarding his role in the Watergate, if any, and to give him a chance to, as he requested of this committee, get back his good name. Third, a question of whether Magruder could have a White House job. At that time I had already told Magruder that that would not be possible, but I think, the point here was to check that decision with the President to be sure he concurred. Fourth, the question of Buchanan sitting in on the hearings as a watch dog of the press—an idea that Dean says I suggested, although it is my recollection he suggested it at the La Costa meeting. In any event, this was certainly not a coverup move, but exactly the opposite. Fifth, the question of the Attorney General meeting with the President. That, too, was a logical step because we were into the matters of executive privilege and the question of White House staff members going to the hearings was important for the President to discuss with the Attorney General. As it concurrently or shortly thereafter developed, Senator Baker requested that Mr. Kleindienst be his contact with the administration.

In the latter part of February, as the questions of executive privilege and other matters dealing with the Senate Watergate inquiry intensified, the President saw that this was involving a substantial amount of time of a number of people in the White House and particularly seemed to be involving Ehrlichman and me in more expenditure of time than the President felt was productive. Consequently, he met with John Dean at the end of February regarding the matters of executive privilege, the Senate hearings, and so forth, and he gave instructions to me and I am sure to others, that all Watergate matters were to be handled by Dean at the White House and by Kleindienst at the Justice Department and that no one else was to devote time to the subject and that no one else was to get into the matter with the President. He was trying to avoid everyone getting into the act, wasting time, and diverting attention—which is a real danger when a highly publicized and volatile matter such as this comes up.

This decision of the President's led to the series of meetings that he had with Mr. Dean starting February 27 and running through March 21, meetings that were primarily concerned, at the outset, I believe, with executive privilege matters. That continued to be a major point, but as that 3-week period went on, the President's concern did grow regarding conflicting Watergate stories and, from what he indicated to me, he was intensifying pressure on Dean to find out a way to get the full story out. Dean at this point was clearly in charge of any matters relating to the Watergate. He was meeting frequently with the President and he still indicated that he was positive there was no White House involvement. During this time, the Gray hearings also became a matter of focus and the executive privilege question arose in connection with them, too. I have the feeling that during this period the President was gradually getting more of a feel of the possibility that there might be some problems involved in the Watergate matter that he had not even dreamed of and that that led to the meeting of March 21, in which John Dean was going to give the President the full story.

I should point out one question that Mr. Dean raised regarding a comment made by the President in his meeting of February 27. He said the President told him he wanted Dean to handle the Watergate matter as it was taking too much of Ehrlichman and Haldeman's time and they were principals in it. Dean indicates that he did not understand what it was the President meant by the statement that Haldeman and Ehrlichman were principals. If this statement was made, I think it is quite clear in the context in which that meeting was held. At that time the major issue was whether the President would permit his principal aides to be called up to the Senate committee to testify. At that time the President considered it inconceivable that anyone would think that the White House counsel would be called to testify and, therefore, was not even considering the possibility of Mr. Dean going before the Senate hearings. He was concerned about the question of Haldeman and Ehrlichman being called. In that sense, I was a principal in the matter of executive privilege. It is significant that the President, according to Dean's report, also emphasized that he would never let Ehrlichman and Haldeman go to the Hill, and I think it is in that connection that he would look at us as principals.

MARCH MEETINGS

The March 13 meeting Mr. Dean had with the President shows on the President's log as having run from 12:42 to 2, an 80-minute meeting, approximately. The President's log also shows that I was in that meeting for 12 minutes from 12:43 to 12:55. Mr. Dean has testified that this was a long meeting, mainly regarding the Gray hearings and Dean's invitation to appear there. He says that toward the end of the conversation they got into a discussion of Watergate matters and the question of money demands being made by the defendants. He says that it was during this conversation that Haldeman came into the office for a brief interruption but that Haldeman then stayed on. It was then, Dean says, that he told the President there was no money to pay the individuals; the President asked how much it would cost; Dean estimated \$1 million; the President said that was no problem and looked over at Haldeman and repeated that statement. Dean then goes on to describe a conversation regarding Executive clemency and then back to the question of money, ending with a laugh from me at Dean's comment that next time he would be more knowledgeable.

The log, however, shows that I was in for 12 minutes at the beginning of the meeting and not at the end.

I have no notes on the March 13 meeting and I have no recollection of that meeting at all. I do not recall going into the President's office and interrupting the meeting with John Dean, but I am sure that I did if the log so indicates. However, I seriously doubt that the conversation John Dean has described actually took place on March 13. I doubt it because of the difference in timing as shown in the President's log, but I also doubt it because a discussion of some of those matters actually occurred during a meeting on March 21.

There is also a timing problem regarding the meeting of March 21, since Dean has stated that I was only in that meeting for the last 5 minutes or so when the President called me in to suggest that a meeting be set up with John Mitchell. My log indicates that I was in a

meeting with the President from 11:15 to 11:55 on the morning of March 21. I do recall that meeting and I recall being in it for substantially more than the 5 minutes that Mr. Dean remembers.

I was not present for the first hour of the meeting, but I did listen to the tape of the entire meeting—including that portion before I came in.

While I am free to testify to everything which I can recall happening during the time I was present, the President has directed that I not testify as to any facts which I learned solely by listening to the tape of the meeting.

My counsel will present a letter* in this respect and I shall obey the decision of the committee as to its ruling thereon. Depending on that decision, I shall issue an appropriate addendum to this statement concerning the March 21 meeting.

Mr. WILSON. Mr. Vice Chairman.

Senator BAKER [presiding]. Mr. Wilson.

Mr. WILSON. I am obliged to present to the committee a communication which I received this morning from the White House and I would like to read it, if I may, and a page carry a copy of it up to you while I am doing it.

Senator BAKER. Would you proceed, Mr. Wilson?

Mr. WILSON. It is addressed to me by Mr. Buzhardt.

This concerns your inquiry as to the extent of the President's waiver of executive privilege with regard to the testimony of Mr. Haldeman before the Senate Select Committee on Presidential Campaign Activities. Your inquiry was directed to Mr. Haldeman's knowledge of the contents of tape recordings of conversations of meetings in the President's office on September 15, 1972, and March 21, 1973.

Under the waiver of executive privilege stated by the President on May 22, 1973, Mr. Haldeman is not constrained by any claim of executive privilege as to conversations at meetings which Mr. Haldeman attended, if such conversations fall within the May 22, 1973, guidelines.

If asked to testify as to facts which he learned about meetings or portions of meetings which he did not attend, but of which he learned solely by listening to a tape recording of such meeting, the President has requested that you inform the Committee that Mr. Haldeman has been instructed by the President to decline to testify to such matters, and that the President, in so instructing Mr. Haldeman, is doing so pursuant to the constitutional doctrine of separation of powers.

Mr. WILSON. Mr. Vice Chairman, I have no argument to supplement that letter.

Senator BAKER. Mr. Wilson, is it your preference that the committee act on this at this point or would it be agreeable for counsel to the committee to take that matter under advisement until Mr. Haldeman finishes his statement?

Mr. WILSON. I think, sir, that if it is not inconvenient, and in order to continue the continuity of this statement, if the committee could act at this time upon that letter, I think it would be very helpful to us.

Senator BAKER. Mr. Wilson, if there is no objection from the committee, and I note that two members of the committee—three members of the committee are not present—if there is no objection from any member of the committee, the committee then will stand in recess while we confer on this matter.

[Recess.]

*The letter was subsequently received and appears in Book 8 as exhibit No. 113.

Senator ERVIN. I have read Mr. Buzhardt's letter giving his view of executive privilege and I have taken the position all the time—and if the members of the committee disagree with me they might so state and may overrule me—that the matters which this committee is authorized by Senate Resolution No. 60 to investigate, are not covered by executive privilege of any kind.

Furthermore, I think if Mr. Haldeman has been authorized by the White House to hear tapes, even though he was not present when the tape was made, that he is authorized to testify about them. I am sorry in a way this is not a court of law where you can rule, but the best evidence of what these tapes say is the tapes themselves and as a member of the committee, I continually pray that the good Lord will give the White House guidance to let this committee see the tapes. [Laughter.]

But as far as I am concerned I overrule the claim of executive privilege interposed in the last paragraph of Mr. Buzhardt's letter.

Senator BAKER. Mr. Chairman, I think that your observation about the best evidence is entirely true, but we don't have the tapes and we have to deal with the facts as we find them, and apparently we find that Mr. Haldeman does have information derived from the tapes of the meeting of March 21. I think, and I continue to think, that we will be better served by having the tapes themselves, but we are about to have litigation over that. So in the meantime, I think, we have got to make do as best we can and I concur in the chairman's ruling.

Senator ERVIN. I am constrained, however, to observe that it is a strange thing that Mr. Haldeman can hear the tapes but this committee cannot hear them. And I hope that they will eventually be made available to the committee because we have heard a lot of complaints about hearsay testimony and this is hearsay, but if Mr. Haldeman is permitted to hear the tapes, it looks like that the representatives of the American people in the Congress ought to be allowed to see them. So you have got a ruling and you may proceed.

Mr. HALDEMAN. I am sorry, Mr. Chairman. What is the ruling?

Senator ERVIN. The ruling is that the claim of executive privilege is not valid in the view of the committee. You can tell us what the tapes said, or your version of it, notwithstanding we take the position that the tapes themselves would be the best evidence of what was actually said. So you can proceed to give your testimony as to what you heard those tapes say or how you interpret the tapes.

Mr. HALDEMAN. If I might comment first, Mr. Chairman, in response to your remarks, I would want to emphasize that I have listened only to two tapes, the tape of the September 15 meeting, at which I was present for the entire meeting, and the tape of the March 21 meeting at which I was present for 40 minutes out of a 105-minute meeting, and I have heard that portion of the tape on March 21 when I was not in attendance.

Senator ERVIN. When did you hear the tapes played?

Mr. HALDEMAN. The March 21 tape I heard in the latter part of April.

Senator ERVIN. And when did you hear the September 15 tape?

Mr. HALDEMAN. I heard it in the early part of July.

Senator ERVIN. Of this year, of course?

Mr. HALDEMAN. Yes, sir.

Senator ERVIN. Because it wasn't recorded until that time.

Senator BAKER. Mr. Chairman, let me ask one or two other qualifying questions on the statement. As the chairman pointed out, Mr. Haldeman, we don't have the tapes and it looks like we are going to have a lawsuit over that, but just for the sake of further establishing the value or susceptibility of misinterpretation of the information you are about to give us, did you in fact listen to the tapes, that is, physically listen to them as distinguished from reading a transcript of the tape?

Mr. HALDEMAN. Yes. There has been to my knowledge no transcript made of any of the tapes at any time. I listened to the actual tape.

Senator BAKER. Can you tell us where you did it?

Mr. HALDEMAN. I did the—I listened to the March 21 tape in my office at the White House, and I listened to the September 15 tape in my residence.

Senator BAKER. All right. Can you tell us something of the quality of the tape, that is, were voices clearly distinguishable, were there periods when they were inaudible? What was the general quality of the recording?

Mr. HALDEMAN. The quality varies. It's good at times and not good at times. It's the kind of tape recording you have in a large room, which the Oval Office is, there is a lot of echo and bounce, it's difficult to follow the conversation completely but it is not by any means impossible.

Senator BAKER. Can you tell us whether or not those two tapes are still in existence?

Mr. HALDEMAN. I do not know, I have no knowledge. They were returned by me to the White House custodian and I have no knowledge of where they are from that point on.

Senator BAKER. Thank you, Mr. Chairman.

Senator GURNEY. Mr. Chairman, can I ask a question?

Senator ERVIN. One question then. Who permitted you—were you authorized by the President to hear these tapes?

Mr. HALDEMAN. Yes, sir; as I indicated in my statement, I heard the tapes at the President's authorization and for the purpose of reporting on their contents to the President.

Mr. WILSON. Mr. Chairman, may I make a lawyer's reservation with respect to your remarks? In some other context before this hearing is over, I would appreciate the opportunity to debate with you, sir, the question of the extent of the constitutional doctrine of separation of powers, sometimes called executive privilege. In other words, you indicated, sir, that you didn't think this was a valid reason, and I gathered under all occasions. I just want you to know that maybe before we are through here I may take the liberty, if you will permit me, of raising the question in some other context.

Senator ERVIN. Always glad to be wiser today than I was yesterday.

Senator GURNEY. Mr. Chairman.

Senator ERVIN. Senator Gurney.

Senator GURNEY. Mr. Haldeman, did you take notes as you were listening to these tapes?

Mr. HALDEMAN. Yes; I did, Senator.

Senator GURNEY. And the notes were taken simultaneously with the listening to the tapes?

Mr. HALDEMAN. That is correct.

Senator GURNEY. Thank you.

Senator INOUE. Mr. Chairman.

Senator ERVIN. Senator Inouye.

Senator INOUE. I have a question. Mr. Haldeman, who had physical custody of the tapes at the time of the hearing of them?

Mr. HALDEMAN. The Technical Security Division of the Secret Service.

Senator INOUE. What person specifically?

Mr. HALDEMAN. I don't know. I don't know. I obtained them through Mr. Bull, the man who replaced Mr. Butterfield as the President's aide.

Senator INOUE. Was he there at all times?

Mr. HALDEMAN. Pardon me?

Senator INOUE. Was he there at all times when the tapes were played?

Mr. HALDEMAN. No, sir; he was not there at all when the tapes were played.

Senator INOUE. We were told that the Secret Service had exclusive custody over these tapes and they were left in your care.

Mr. HALDEMAN. The particular tapes that I listened to, yes, sir.

Senator INOUE. Thank you very much.

Senator MONTOYA. Mr. Chairman.

Senator ERVIN. Senator Montoya.

Senator MONTOYA. Did I understand you to say that you took the September 15 tape to your home?

Mr. HALDEMAN. That is correct.

Senator MONTOYA. How long did you keep it there?

Mr. HALDEMAN. Overnight.

Senator MONTOYA. Who was present when you played this tape?

Mr. HALDEMAN. No one.

Senator MONTOYA. Who was present when you played the March 21 tape?

Mr. HALDEMAN. No one.

Senator ERVIN. I think we subpoenaed those notes of yours. Did you bring them?

Mr. HALDEMAN. No, sir; my notes are in the President's files, I don't have any notes.

Senator ERVIN. Oh, the President keeps the notes and he keeps the tapes. [Laughter.]

Mr. HALDEMAN. Yes, sir.

Senator ERVIN. Anyway, we have made a ruling and we might as well proceed.

Mr. HALDEMAN [continues reading his statement]. I will proceed with the addendum on the March 21 meeting. I was present for the final 40 minutes of the President's meeting with John Dean on the morning of March 21. While I was not present for the first hour of the meeting, I did listen to the tape of the entire meeting.

Following is the substance of that meeting to the best of my recollection.

Dean reported some facts regarding the planning and the break-in of the DNC and said again there were no White House personnel involved. He felt Magruder was fully aware of the operation, but

he was not sure about Mitchell. He said that Liddy had given him a full rundown right after Watergate and that no one in the White House was involved. He said that his only concerns regarding the White House were in relation to the Colson phone call to Magruder, which might indicate White House pressure, and the possibility that Haldeman got some of the "fruits" of the bugging via Strachan since he had been told the "fruits" had been supplied to Strachan.

He outlined his role in the January planning meetings and recounted a report he said he made to me regarding the second of those meetings.

Regarding the post-June 17 situation, he indicated concern about two problems, money and clemency. He said that Colson had said something to Hunt about clemency. He did not report any other offers of clemency although he said he felt the defendants expected it. The President confirmed that he could not offer clemency and Dean agreed.

Regarding money, Dean said he and Haldeman were involved. There was a bad appearance which could be developed into a circumstantial chain of evidence regarding obstruction of justice. He said that Kalmbach had raised money for the defendants; that Haldeman had OK'd the return of the \$350,000 to the committee; and that Dean had handled the dealings between the parties in doing this. He said that the money was for lawyers' fees.

He also reported on a current Hunt blackmail threat. He said Hunt was demanding \$120,000 or else we would tell about the seamy things he had done for Ehrlichman. The President pursued this in considerable detail, obviously trying to smoke out what was really going on. He led Dean on regarding the process and what he would recommend doing. He asked such things as—"Well, this is the thing you would recommend? We ought to do this? Is that right?" and he asked: "Where the money would come from? How it would be delivered?" and so on. He asked how much money would be involved over the years and Dean said "probably \$1 million—but the problem is that it is hard to raise." The President said "there is no problem in raising \$1 million, we can do that, but it would be wrong." I have the clear impression that he was trying to find out what it was Dean was saying and what Dean was recommending. He was trying to get Dean's view and he was asking him leading questions in order to do that. This is the method the President often used when he was moving toward a determination.

Dean also mentioned his concern about other activities getting out, such as the "Ellsberg" break-in, something regarding Brookings, the other Hunt activities for Colson on Chappaquiddick, the Segretti matter, use of Kalmbach funds, et cetera.

When I entered the meeting, there was another discussion regarding the Hunt threat and the President again explored in considerable depth the various options and tried to draw Dean out on his recommendation.

The meeting then turned to the question of how to deal with this situation and the President mentioned Ehrlichman's recommendation that everybody should go to the grand jury. The President told Dean to explore all of this with Haldeman, Ehrlichman, and Mitchell.

There was no discussion while I was in the room—nor do I recall any discussion on the tape—on the question of clemency in the context of the President saying that he had discussed this with Ehrlichman and with Colson. The only mention of clemency was Dean's report that Colson had discussed clemency with Hunt and the President's statement that he could not offer clemency and Dean's agreement—plus a comment that Dean thought the others expected it.

Dean mentioned several times during this meeting his awareness that he was telling the President things the President had known nothing about.

I have to surmise that there is a genuine confusion in Mr. Dean's mind as to what happened on March 13 versus what happened on March 21, because some of what he describes in quite vivid detail as happening on March 13 did, in fact, happen on March 21. The point about my laughing at his being more knowledgeable next time, and the question that he says he raised on March 13 regarding the \$1 million are so accurately described, up to a point, as to what really happened on March 21 that I believe he is confused between the two dates.

Mr. Dean's recollection that the President had told him on March 13 that Ehrlichman had discussed an offer of clemency to Hunt with him, and he had also discussed Hunt's clemency with Colson is at total variance with everything that I have ever heard from the President, Ehrlichman, or Colson. I don't recall such a discussion in either the March 13 or the March 21 meeting.

Now, to the question of impression. Mr. Dean drew the erroneous conclusion that the President was fully knowledgeable of the coverup at the time of the March 13 meeting in the sense: First of being aware that money had been paid for silence, and that, second, the money demands could reach \$1 million and that the President said that was no problem. He drew his conclusion from a hypothetical discussion of question since the President told me later that he had no intention to do anything whatever about money and had no knowledge of the so-called coverup.

I had no difficulty accepting the President's version based on years of very close association with President Nixon and on hundreds of hours of meetings with him. Having observed the President over those years in many different situations, it was very clear to me on March 21 that the President was exploring and probing, that he was surprised, that he was trying to find out what in the world was going on. He did not understand how this all fit together and he was trying to find out. I was pushing hard for that kind of information from Mr. Dean.

The President, further, was concerned about how this ought to be dealt with and he was interested in getting views from Ehrlichman, Dean, Haldeman, and Mitchell because he felt that those views might be enlightening as to what the true situation was.

For that reason he asked that the meeting be held with the four of us in the immediate future and such a meeting was scheduled the next day.

Senator BAKER [interrupting]. Mr. Haldeman, before you continue, is that the end of your addendum?

Mr. HALDEMAN. Yes, it is.

Senator BAKER. Would you supply us with copies or the original so that we could have copies?

Mr. HALDEMAN. I believe—

Senator BAKER. I understand—has a copy been supplied to the committee?

Mr. DASH. It is being reproduced now.

Senator BAKER. Thank you very much.

Senator ERVIN. You may proceed with your original statement.

Mr. HALDEMAN. Thank you, sir.

Mr. Dean, Mr. Ehrlichman, and I met with the President later that afternoon of the 21st. That meeting dealt with the questions of the grand jury, the Senate committee, and executive privilege in connection with gathering the facts and getting them out. I think there was some discussion of Ehrlichman's theory that everybody should go to the grand jury; and Dean's reaction that that would be fine as long as we had immunity. Mr. Ehrlichman, as I recall, very strongly shot down that thought from Dean saying it did not make any sense at all. Dean has testified that he argued that the way to get the truth out would be to send everybody to the grand jury with immunity. That, in itself, is rather indicative of the different attitudes. Mr. Ehrlichman was arguing for going to the grand jury without immunity in order to get the truth out. Mr. Dean was arguing for going to the grand jury with immunity to get the truth out.

I recall an incident after that afternoon meeting that Mr. Dean also recalls, but he says it took place before and he sees it a little bit differently. I remember that Dean and Ehrlichman and I were standing on the top of the steps of the EOB, the Executive Office Building, outside the President's office. Dean said, sort of thoughtfully, that maybe the solution to this whole thing was to draw the wagons around the White House and let all the chips fall where they may, because that would not hurt anyone in the White House, nobody here had a problem—but his question was: What would that do in the way of creating problems for Mitchell and Magruder? The significance of that comment was that it still seemed to be clear in Dean's mind that the problem did not lie in the White House.

The next step was the meeting of Mitchell, Ehrlichman, Dean, and myself the next day with the President.

The four of us met first in the morning in my office and had some discussion of Dean's report to the President, although not in any detail. Most of the discussion was regarding approaches to dealing with the situation rather than a review of the facts of the situation.

Mitchell turned the discussion to the problem of executive privilege, and he argued very strongly that the position the President had taken and was maintaining regarding executive privilege appeared to the public to be a coverup on the part of the President and that it was bad politics, bad public relations, and a bad idea. Dean at that meeting again argued his idea of everybody going to the grand jury with immunity in order to get the facts out.

That was the day the news report was received regarding Pat Gray accusing Dean of having been a liar in some report he had given to the FBI. That interrupted the meeting and there was some discussion about it.

We met in the afternoon in the EOB office with the President and that, too, was a discussion of how to handle the situation rather than any further exploration of the facts. At that meeting the grand jury argument was ruled out. Ehrlichman again opposed the idea of going to the grand jury with immunity and the more discussion there was, the more it seemed that it was not a practical thing and probably not within our control anyway.

Mitchell very strongly recommended that the President drop his claim of executive privilege, contending that was a bad position for him to be in. That view, for the time of that meeting at least, prevailed and the decision that came out of the meeting was for the President to waive executive privilege and to permit all White House staff people to go to the Senate committee and testify fully in open hearing. But it was felt that before that was done, and in order to avoid the problem that had been discussed earlier of the committee hearings resulting in the facts coming out piecemeal, one witness at a time, and being the subject of a major news story, there should first be a complete report put out by the White House prepared by Dean covering all of the facts so that what all of us would say would already be known in one place rather than having bits and pieces come out over a period of time.

So, as I recall, Dean was told at that meeting on the afternoon of March 22, to prepare a full written report for public release regarding the facts as they were known to him and as they in any way involved anyone in the White House. We talked about including in that, even though it was not related to Watergate, all of the facts on the Segretti matter so that any question that might arise on that would also be answered.

There was also at that meeting a question of the Senate committee rules and how the committee was going to operate. The President had expected Kleindienst to be in contact with Senator Baker, the vice chairman of the committee, regarding these matters. We were not sure whether he had been or not and the President picked up the phone during the meeting and called Kleindienst to talk to him about maintaining the contact with Senator Baker.

John Dean was asked how long it would take him to write a report and he said it would probably take 2 days. He was told to go ahead with that process and the meeting ended on the note that the way this would be handled was that all of us would go to the Senate committee without any claim of executive privilege but that first there would be a complete report put out publicly.

Through this period of time, I still had full confidence in John Dean and I think the President did. He had not in any way hit himself except on the indirect point that there was a possible circumstantial chain of evidence leading to a charge of obstruction of justice than of legality. If it was his intention to impress the President, Ehrlichman, and me with the fact that he and the two of us were heavily involved in a coverup program of illegal activities, he did indeed fail to do so and it is my very clear impression that that was not his intent at that time. He did start dropping some indications that Magruder at least, and possibly Mitchell, had serious legal problems and the President did become concerned about the problem of Watergate and the new information that had been brought to his attention. That was the reason for his decision that afternoon, and for some changes in his decision

over the following week, regarding the White House staff going to the Senate committee without executive privilege; but more importantly, regarding the assignment to John Dean to prepare a full and complete report on all of the facts of the matter. After the March 22 meeting in the afternoon, the President left for Key Biscayne. The rest of us remained in Washington. I went to Key Biscayne the next morning to join the President for the weekend. John Dean went home to write his report, but found that he was besieged by reporters as a result of the Pat Gray allegation that he had lied, and so the President, in talking to him on the phone the next day, suggested that he go to Camp David where he would be free from the press and would have an uninterrupted opportunity to get his report prepared. I am convinced that there was a discussion of Dean writing a report, and that when we left the meeting on the afternoon of the 22d it was clear in all of our minds that that was Dean's assignment and that he was expected to do so over the next couple of days.

CAMP DAVID

Over the weekend that Dean was at Camp David I had several phone conversations with him. There was a story that Dean and Magruder knew about the bugging and that was a matter of concern to Dean with which he was dealing. He had obviously been working on the report he was supposed to be preparing and perhaps talking to people. He seemed now to feel that Magruder was definitely involved. He gave that indication, which he had given before, on the phone. He was not at all sure about whether or not Mitchell was involved.

On the 26th, I had a long phone call with Dean. It is interesting because he said there was no communication on that day of any significance.

I had called Dean—this is on the 26th—to ask if he would have any problem if the President announced that day that he was requesting that Dean be called to the grand jury without immunity, and I specified that because in the earlier discussions Dean had made the point of immunity. Dean said, "No. I would have no problem with that." Then he said, "I have been working on this whole thing and trying to analyze what our problems are."

He said there is a problem with Magruder regarding the planning meetings, because apparently he has testified as to the number of meetings and the content of the meetings and his testimony was different than what mine would be if I went to the grand jury now. He said there was only one meeting, and it was for the purpose of discussing campaign spending laws; while, in fact, there were two meetings and they were for the purpose of discussing intelligence presentations by Liddy.

He said, "In looking over this whole thing, there are several areas of concern. One is the blackmail area. Blackmail started way back." This was the first time he spelled this out to me. Mitchell was hit by Parkinson or O'Brien, who were hit by Bittman, who was hit by Hunt, who had been hit by the defendants saying that they needed money and if they did not get it they were going to cause trouble. It was not spelled out much more than that, I do not think.

Mitchell told Dean—this is Dean now recounting to me what his report apparently was showing—to tell Haldeman and Ehrlichman to get Kalmbach to raise the money and Dean did. Kalmbach raised some \$70,000, which he gave to LaRue.

Then, we got to the question of the \$350,000 and there was a problem there because the \$22,000 was spent out of that and there was a problem of how to return it and account for the missing \$22,000.

Then there was the problem of blackmail to the White House directly. He said there were two instances of that, one—Mrs. Hunt called Colson's secretary and said something about a demand for money. The other was Hunt's the preceding week.

Regarding clemency, he said Colson talked to Bittman. He did not make any commitment but told him he would help.

He referred to a letter McCord had written to Caulfield requesting a meeting. Mitchell told Dean to have him see him and find out what he was up to.

Another problem area was Dean's delay in turning over the evidence in Hunt's safe to the FBI. Another was a call Liddy had made to Krogh. Apparently, he had been given a brushoff by Krogh and that had made Liddy mad.

Following that phone call, the President dropped his plan to announce that Mr. Dean would be requesting an appearance immediately before the grand jury in order to lay out all the facts as he knew them. The problem was that Dean had not really sorted out the facts at that point and it was not appropriate for him to go to the grand jury.

Dean has said in his testimony that there was no discussion in the March 26 phone call of his going to the grand jury—yet, that was the reason for the call.

In one of the phone calls from Camp David, I believe on the 27th, Dean told me that he had talked with Paul O'Brien who had told him Magruder had said that he had gone ahead with the Watergate operation on orders from Strachan, who said Haldeman had ordered it because the President wanted it done. This is the same report that Dean testified he had given to me in early February. Another confusion in dates—but an important one.

By the 30th, Dean had not delivered any report and he said he had not been able to write one; and the President stopped dealing with Dean. In effect, he had stopped dealing with him after the 23d.

I do not believe my attitude toward Dean had changed at that point. I was puzzled and maybe Dean was reading some puzzlement; but I had been in frequent communication with him in quite lengthy phone conversations while he was at Camp David—contrary to the implication he has created that he was practically incommunicado while he was up there. I had the feeling that he was telling me quite openly what the problems were and what he was trying to work out.

On March 30, the President made the announcement that nobody in the White House would go to the Senate hearings but that all members of the White House staff would, of course, appear before the grand jury, if called, and would cooperate fully.

Also on the 30th, the President put Mr. Ehrlichman officially on the Watergate investigation and told him to develop the facts in the case and try again to get to a final conclusion.

From April 1 to 7, I was in San Clemente with the President. Despite Mr. Dean's statement that during that period he, under advice of counsel, endeavored to avoid any contact with Haldeman, Ehrlichman, or Mitchell—we talked on the phone daily. The main problem he seemed to have during that period was the continuing one with Mitchell regarding the discrepancy on the number of meetings.

It is my understanding that Dean hired a lawyer, Mr. Shaffer, about March 30. He had indicated earlier that he might do this so he—and, through him, the President—could consult an attorney familiar with criminal law on the implications of some of the concerns Dean was developing. He told me that his lawyer had told him he should not write anything down about the Watergate case and, if he had written anything down, he should not show it to anyone and he should not talk to Mitchell or Magruder. He did not mention to me that his lawyer had told him not to talk to me or Ehrlichman and he did, in fact, continue to talk—to me, at least.

He told me his lawyers had met privately with the U.S. attorneys on April 4. He told me again on April 7 that his lawyers had met with the U.S. attorneys on April 6. This despite the fact that in his testimony he has said that his lawyers were meeting with the prosecutors but this was unknown to Haldeman or Ehrlichman.

He further said that the U.S. attorneys had told his lawyers—and he believed that this was the straight information because this was an eyeball-to-eyeball meeting—that the U.S. attorneys were only interested in the pre-June 17 facts. They had no concern with post-June 17. They only wanted Dean as a witness. They did not consider him a target of their investigation. They did not consider Haldeman as a target and probably would not even call him as a witness. Liddy had told them everything but his lawyers didn't know it; and Liddy completely cleared the White House; that is, in telling them everything, Liddy had confirmed that nobody in the White House had had any involvement.

We returned to Washington on April 8. During that week Ehrlichman continued his investigation—and on Saturday the 14th reported his conclusions to the President in the form of a verbal statement of his theory of the case based on all of the information he had acquired—still, of necessity, mostly by hearsay.

There were several meetings with Dean that week and I recall a continuing concern on Dean's part regarding the discrepancy with Mitchell and the planning meetings. I don't recall any major changes in Dean's view of the facts from what he had reported on the phone earlier.

By the end of the week both Dean and Ehrlichman had come to the view that Mitchell had approved the Watergate plan and there was some discussion that, if that were the fact, and if Mitchell decided to step forward and say so, it would be a major step in clearing up the Watergate mystery. This was not discussed in any context of asking Mitchell to do this as a scapegoat or to divert attention from others—but as a major step in bringing out the truth.

Over the weekend, both Magruder and Dean met with the U.S. attorneys in private sessions and gave their full accounts of the Water-

gate. These meetings were reported to the President on Sunday the 15th by Attorney General Kleindienst and Assistant Attorney General Petersen. Their report was not very surprising to the President, since it confirmed, with minor variations, the theory that Ehrlichman had given him on Saturday.

Because the Dean and Magruder testimony seriously implicated John Mitchell, Kleindienst removed himself from responsibility on Watergate and the President put Petersen in full charge.

By the end of April, it had become apparent to me that, because of the increasing intensity of charges and rumors in which my name was raised and the need for me to appear before the grand jury and this committee, it was no longer possible for me to perform my White House duties effectively. After some discussions regarding leave of absence versus resignation, I concluded I should resign and the President agreed. I resigned on April 30.

I said then that I was confident that when the full truth was known it would be clear I had had no knowledge of or involvement in Watergate or any "coverup" and I had not failed to meet the very high standards of integrity which President Nixon had properly expected of everyone on his White House staff and which I have always held for myself.

I have that confidence in full measure today and I welcome the opportunity to help in the process of making the truth known.

Senator ERVIN. I think it is appropriate not to take up the examination of the witness until in the morning. I do want to make some observations concerning the matter which Fred Thompson mentioned.

Unfortunately we did have on several occasions while Mr. Ehrlichman was testifying some demonstrations from some members of the audience. I deplored those demonstrations and may have been at fault in not squelching them more vigorously.

I want to announce now that no such demonstrations will be permitted in the future and if any person who engages in one can be identified, the officers should eject him from the committee hearing room because I certainly agree with Fred Thompson who has rendered very valuable services to this committee that it would be highly desirable if we could do exactly the same here as is done in a courtroom and conduct an investigation in an atmosphere of judicial calm.

I am going to say, however, that the questions put to Mr. Ehrlichman were rather robust and the answers given by Mr. Ehrlichman in response to those questions sometimes were rather robust, too. I quote the King James version of the Bible and I think that the proverb says that "Merry hearts doeth good like a medicine," and sometimes I think a man personally has a constitutional right to laugh even in a solemn hearing room. But I am going to suggest that possibly Mr. Ehrlichman invited some of the demonstrations by certain testimony.

For example, when I asked him if he didn't bug the conversations of Kalmbach and Kleindienst, I believe, he said, no, he didn't bug them. He didn't bug the conversations, he merely recorded them. And I think that that might have invited a little demonstration of

the inability of the audience to determine exactly the precise line between bugging and recording of phone conversations without considering the other party.

And then one time I was questioning Mr. Ehrlichman and he said I had interrupted his answer which I may have done because sometimes I get a little impulsive, and he said that I interrupted his answer because I didn't want to hear what he was going to tell me.

Well, I am sure that Mr. Ehrlichman gave as good as he got, whether it was tit for tat during the hearings, and that is quite normal because I think he is a rather vigorous and emphatic man.

And another thing—a worse demonstration was probably intrigued by me or was my fault because when I stated that I didn't agree with Mr. Ehrlichman on the proposition that the President had no constitutional right to suspend the fourth amendment, Mr. Ehrlichman asked me how I knew that, and I said because the amendment was written in the English language and that is my mother tongue. So I think it produced what I thought was a demonstration, perhaps of the biggest proportions anyone could have and I would have to say maybe I contributed to that myself.

But I think we gave Mr. Ehrlichman an opportunity to fully answer all of the questions that were put to him by the committee members or by the attorneys.

I also think that we gave Mr. Wilson a fair opportunity to present his arguments about the inherent or implied powers of the President, and I think that on most occasions when Mr. Wilson interposed an objection to evidence that without serious objection of any other member of the committee, I sustained his objections. And I hope that in the future there will be no more demonstrations of any kind and I hope that when people attempt to laugh, anybody in the audience, that they will laugh as inaudibly as possible and I am going to be very—I am as mild-mannered a man as ever cut a throat or scuttled a ship and I am going to enforce the rule against demonstrations as fully as I can and I certainly do agree with the propriety of Mr. Thompson making the observations which he did, notwithstanding the fact that I think that Mr. Ehrlichman by his replies, as well as myself by my questions and responses to his questions, may have invited a little bit of a demonstration.

Senator BAKER. Mr. Chairman, I think that probably requires just a very brief but not too brief addendum. I think we have come a long way, Mr. Chairman, in these hearings. We have come a long way as a united committee, by and large, free of at least the grosser forms of partisan political confrontation. We have come a long way in terms of time, in terms of the expenditure of emotional traits and energy and resources. As I said this morning, we are tired. I have no apology for that, and I find that in attitudes and I am not being critical there. I simply mean that we have got to get about the business of finishing these hearings. I applaud, Mr. Chairman, for very effective action in trying to establish and maintain decorum in this hearing room. I think it has been absent on occasion. I think we are all at fault. I assume my part of the burden. I confess that I can't resist trying to match your story for story which will turn out to be absolutely impossible, but I share my part of the burden. But this is a historic and important and significant

occasion and it must not be subjected to the charge of being run in a cavalier or casual way. So I think we profited from today, and I think that the remarks were well taken by you, Mr. Chairman. I think the remarks by Mr. Thompson were well taken. I think the audience no doubt will cooperate with us in the future and that will merely expedite the purpose of this hearing which is to receive facts and ultimately to state conclusions. Thank you, sir.

Senator ERVIN. I would like to add just a little bit more in this vein. This committee had to be appointed from the membership of the Senate, and every Member of the Senate either calls himself a Republican or calls himself a Democrat, although sometimes on their voting records it's hard to distinguish between the two. But I think that every member of this committee has worked very conscientiously in an effort to bring out the truth in these matters. I think that they have tried to be as fair as human beings can because human beings do get provoked a little bit even when their intentions are the best and I am proud of all the members of this committee.

I am also very proud of the committee staff. Sam Dash has done a marvelous job as chief counsel and Fred Thompson has done a marvelous job as minority counsel, and they have cooperated as members of the committee have, I think, exceedingly well, and I hope that we will be able to continue this cooperation, and I hope that we can find what the truth is, whatever it may turn out to be.

Senator BAKER. The healing balm has now been applied, Mr. Chairman.

Mr. DASH. Mr. Chairman, before we recess for the day, I have a sworn statement which the committee has received from Mr. Bernard Fensterwald, who is Mr. McCord's attorney, and I would like to submit it for the record.

Senator ERVIN. Let the reporter mark it with the appropriate exhibit number.

[The statement referred to was marked exhibit No. 109A.*]

Senator ERVIN. We will stand in recess until 9:30 in the morning.

[Whereupon, at 6:15 p.m., the hearing was recessed, to reconvene at 9:30 a.m., Tuesday, July 31, 1973.]

*See p. 3012.

EXHIBITS SUBMITTED FOR THE RECORD

EXHIBIT No. 94A

THE WHITE HOUSE

WASHINGTON

July 25, 1973

Dear Mr. Chairman:

White House counsel have received on my behalf the two subpoenas issued by you, on behalf of the Select Committee, on July 23rd.

One of these calls on me to furnish to the Select Committee recordings of five meetings between Mr. John Dean and myself. For the reasons stated to you in my letters of July 6th and July 23rd, I must respectfully refuse to produce those recordings.

The other subpoena calls on me to furnish all records of any kind relating directly or indirectly to the "activities, participation, responsibilities or involvement" of 25 named individuals "in any alleged criminal acts related to the Presidential election of 1972." Some of the records that might arguably fit within that subpoena are Presidential papers that must be kept confidential for reasons stated in my letter of July 6th. It is quite possible that there are other records in my custody that would be within the ambit of that subpoena and that I could, consistent with the public interest and my Constitutional responsibilities, provide to the Select Committee. All specific requests from the Select Committee will be carefully considered and my staff and I, as we have done in the past, will cooperate with the Select Committee by making available any information and documents that can appropriately be produced. You will understand, however, I am sure, that it would simply not be feasible for my staff and me to review thousands of documents to decide which do and which do not fit within the sweeping but vague terms of the subpoena.

Honorable Sam J. Ervin

-2-

It continues to be true, as it was when I wrote you on July 6th, that my staff is under instructions to cooperate fully with yours in furnishing information pertinent to your inquiry. I have directed that executive privilege not be invoked with regard to testimony by present and former members of my staff concerning possible criminal conduct or discussions of possible criminal conduct. I have waived the attorney-client privilege with regard to my former Counsel. In my July 6th letter I described these acts of cooperation with the Select Committee as "genuine, extensive and, in the history of such matters, extraordinary." That cooperation has continued and it will continue. Executive privilege is being invoked only with regard to documents and recordings that cannot be made public consistent with the confidentiality essential to the functioning of the Office of the President

I cannot and will not consent to giving any investigatory body private Presidential papers. To the extent that I have custody of other documents or information relevant to the work of the Select Committee and that can properly be made public, I will be glad to make these available in response to specific requests.

Sincerely,



Honorable Sam J. Ervin
Chairman
Select Committee on Presidential
Campaign Activities
United States Senate
Washington, D. C. 20510

2909

EXHIBIT No. 95

STATISTICS

REQUESTS FOR INSPECTION OF INCOME TAX RETURNS

OR DATA FROM RETURNS

BY FEDERAL AGENCIES

FOR THE SIX-MONTH PERIOD

JANUARY 1, 1972 - JUNE 30, 1972

INTERNAL REVENUE SERVICE

SEPTEMBER 1972

TAX CHECKS REQUESTED BY FEDERAL AGENCIESJanuary 1, 1972 - June 30, 1972

<u>Agency</u>	<u>Number</u>
White House	477
Department of Justice	407
Department of Treasury	152
Department of Commerce	64
Department of State	<u>41</u>
TOTAL	1,141

EXHIBIT NO. 96

STATISTICS

REQUESTS FOR INSPECTION OF INCOME TAX RETURNS

OR DATA FROM RETURNS

BY FEDERAL AGENCIES

FOR THE SIX-MONTH PERIOD

JULY 1, 1972 - DECEMBER 31, 1972

INTERNAL REVENUE SERVICE

TAX CHECKS REQUESTED BY FEDERAL AGENCIESJULY 1, 1972 - DECEMBER 31, 1972

<u>Agency</u>	<u>Number</u>
White House	438
Department of Justice	365
Department of Treasury	241
Department of Commerce	50
Department of State	64
Export-Import Bank	<u>9</u>
TOTAL	1,167

EXHIBIT NO. 97

6 July 1972

MEMORANDUM FOR RECORD

At 1005 on 6 July I saw Acting FBI Director L. Patrick Gray at his office. We were alone during our conversation. I handed him the Memorandum which is attached and said that it covered the entire relationship between the Watergate suspects and the Agency. In all honesty I could not tell him to cease future investigations on the grounds that it would compromise the security interests of the U.S. Even less so could I write him a letter to this effect. He said that he fully understood this. He himself had told Ehrlichman and Haldeman that he could not possibly suppress the investigation of this matter. Even within the FBI there were leaks. He had called in the components of his Field Office in Washington and "chewed them out" on this case because information had leaked into the press concerning the Watergate Case which only they had.

I said that the only basis on which he and I could deal was absolute frankness and I wished to recount my involvement in this case. I said that I had been called to the White House with Director Helms and had seen two senior staff assistants. (I specifically did not name Haldeman and Ehrlichman.) I said that we had been told that if this case were investigated further, it would lead to some awkward places, and I had been directed (the implication being that the President had directed this although it was not specifically stated) to go to Acting Director Gray and tell him that if this investigation were pursued further, it could uncover some ongoing covert operations of the Agency. I had done this. Subsequently, I had seen Mr. Dean, the White House Counsel, and told him that whatever the current unpleasant implications of the Watergate Case were, that to implicate the Agency would not serve the President but would enormously increase the risk to the President. I had a long association with the President and was as desirous as anyone of protecting him. I did not believe that a letter from the Agency asking the FBI to lay off this investigation on the spurious grounds that it would uncover covert operations would serve the President. Such a letter in the current atmosphere of Washington would become known prior to election day and what was now a minor wound could become a mortal wound. I said quite frankly that I would write such a letter only on direction from the President and only after explaining to him how dangerous I thought such an action would be to him and that, if I were really pushed on this matter, I would be prepared to resign.

Gray thanked me for my frankness and said that this opened the way for fruitful cooperation between us. He would be frank with me too. He could not suppress this investigation within the FBI. He had told Kleindienst this. He had told Ehrlichman and Haldeman that he would prefer to resign, but his resignation would raise many questions that would be detrimental to the President's interests. He did not see why he or I should jeopardize the integrity of our organizations to protect some middle-level White House figure who had acted imprudently. He was prepared to let this go to Ehrlichman, to Haldeman, or to Mitchell for that matter. He felt it important that the President should be protected from his would-be protectors. He had explained this to Dean as well as to Haldeman and Ehrlichman. He said he was anxious not to talk to Mitchell because he was afraid that at his confirmation hearings he would be asked whether he had talked to Mitchell about the Watergate Case and he wished to be in a position to reply negatively. He said he would like to talk to the President about it but he feared that a request from him to see the President would be misinterpreted by the media. I said that if I were directed to write a letter to him saying that future investigation of this case would jeopardize the security of the U.S. and covert operations of the Agency, I would ask to see the President and explain to him the disservice I thought this would do to his interests. The potential danger to the President of such a course far outweighed any protective aspects it might have for other figures in the White House and I was quite prepared to resign myself on this issue. Gray said he understood this fully and hoped I would stick to my guns. I assured him I would.

Gray then said that though this was an awkward question, our mutual frankness had created a basis for a new and happy relationship between our two Agencies. I said the Memorandum I had given him described in detail the exact measure of Agency involvement or non-involvement in this case, including information on Dahlberg and Daguerre.

He thanked me again for my frankness and confidence and repeated that he did not believe that he could sit on this matter and that the facts would come out eventually. He walked me to the door.



Vernon A. Walters
Lieutenant General, USA

EXHIBIT No. 98

4-13-73 3pm

Rausener

Magruder - made
A prior to bang

Liddy = off-record

JNM. ?
May get him on record

Maroulis - atty - to see JNM
for OK -

May be diverted to WH
by JNM

PostWG

McCord -

Strachen - something
happened

Hunt back (lying)

No WH indictment

Avoid Spec Prosecutor
Caulfield
Kraigh

Case B A ID

When some before 60

Wont subpoena -
Better to cooperate

in m's office
know of \$
in request to help
LaRue O'B. urged
m make decis last min
m ph D

US Atty
doesn't want to cause
WHH probs

Magt + JNM = pre
post - LaRue?, JNM, Mardian?

Ab - can crack a deal

HE
HK
350

Almanac

7/1 SJ will break case - 2 wks 7/1
5/15 Indictments

AG to Ervin - lungs will
prejudice the
new case

fair trial
in 1-2 mo

hold lungs off
until trial
ended -

Ray'll never
start again

JNM - plea or ? -

RK resign
need acting -

US Atty: JD not a target
not in army
WH person -

Golden S. Khan 4-15-75 my opn
10AM 3 (inter. by - msg)
to noon

3/12 Lid threatened Segrette
ISM memo to JNM -

must. Concol untell opn
Lid promising for that
JNM, H & S: 2 to S:
get Seg under Lid control

H to S =

see Liddy

T'fer opn - Muskie to McGov.

"whatever your capabilities are"

Dean - Krogh strong rec
Lid given a raise over WH
salary when went to
Comm

27,500 to 30,000
H approved - an exception -
H obj to Magruder
treating WH people
as higher salary -

S talked to Krogh & Dean
K told Lid he'd get the raise

Based on need -

implies
more useful than Rein here

little discussions

Summer '71 on
Proposals surfaced & died

eg. Andredge

Dean pro & con Caultfield

H - JNM mags -

This always the unresolved Q.

None would grab it -
"we ought to do it" -

H. Dean

proposes S

Mardian proposed -

St unaware of the Dean mags -

S to.
H

The L.C. - Mags find a prob in
The intell capability
Mardian take over

H = let Dean handle -
you way away to it

Thus all pro - May

Sto H memo

a. H "A sophisticated
intell opn is going w/a
300 budget"

A tab - ^{carbon copy} Dechain II "
list info

Reliable sources are reported to
have said

Mon after 6/17 showed it to H
? if he ever read the tab -

get maybe, 3 contents -

get no "Gemstone"

Don't know if Wgate the source of
these -

Don't remember seeing a budget
w/ "bugs" on it -

E: use your best recoll.

May asked me to say I asked
him to keep lid on -

It's not so -

He gave passionate pitch about his
family -

⊖: May not be decision-maker -

Ask nothing w/ doc photographs
attached -

Ken Rietz - Magruder's 2^d intell op'n

↳ former FBI man in Tenn

- a cab driver

- Volunteered to Muske Hqs

- Carried all mail

- Chauffeur

photo'd all EM's mail

a piece to E-Novak

all Qd except chauffeur

to EM's for dinner

Rid nothing

Transferred → Rietz to HAT

Asst Staff sought FBI man for staff

Rietz worried about cash funds -

Magr pushing

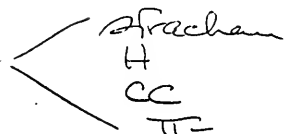
May entry - bug planted -

No JMW/Knowl of May or
Dean June break-in

He did -

Magr - Hofgren

Caution re Dean objectivity

Magr reaches 

fired GL
GL to Strachan
Move him
TT wants this project to
go on -

Magr. und. conf.
wife - poss indicted
going to lv govt

Magrader - not inevitably true
Not INM

Dean the key problem -
Concerned about Post- w/G
Money -



initial

Mr Rivers (HK) * 25M cash Bittman - plus
depos. from acct

Obstruction/

Wtts - a Def is a WH
Purpose of giving money
ok - defense funds -
substance -
P to not take

to HH → wife →
to McCord → his atty

Tues this week

McCord letter -

Parkinson - "a lie - going to get
these bastards"

toed atty

get cold feet - privileged
stood, sat -

McCord - psychotic

nervous

arrogance

religion - soul-baring

later

Bittman - Parkinson

Mr Hunt wrote memo -

memo (ark. to Dean to La Rue

La Rue became resp for funds

Just bef HH sentence - Pittman ph OB
to Dean, JNM, let -
\$70M

[Atty-Client Priv. won't
cover mtyg he was
in or conspiracy] Dean

[Dean's Atty - Hogan -

JNM to H -
2 blocs of \$

Nite of Wgite
Dean & Staur took cash home
\$81,000

Ret next day
Given to LaRue on advice of Mar. Jan
Became substance -

LaRue has \$100M now (8/1M held for 11 mo in C)
~~Dean~~

Dean rid 1-2 mil in cash came in
for his rep

275M to HK

350 to WH

1,700,000

One block
of paper -
exists -
3 times where

Strauss "done"
 but no indictment
 no perjury - foray

A UK w/ HK -

Dem suit
 Common Cause

get CREP to file w/ Cong - ^{need 2 wks 6 mo}
 all contrib
 Moot the Common Cause
 case

Strauss very opposed - breaks faith -

Will lose the case -

Dem Nat Com suit -

Andrews hired Larry O'B - holds his firm
 can't get credit

Strauss wants to settle
 JM meet Strauss yes.

Buy \$50M -

Have \$50M

HH a prime contact for Regatti: -
 Supplied a Fla printer
 3 Key Regatti men
 Norton LA
 2 Tampa
 3 Fla } dirty tricks

For of
 Galt Canuck letter

Chapin will take a bath -

working newsmen for more
 favorable stories
 per Lasky

Lots of Regatti contact

Regatti's worry -

checks { 1971 - rec'd ck \$667 x 7
 { 72 667 x 1
 { 71

Cash

5000
 5000
 25000
 \$40M

Cash HK
 Cash HK

4/15 must pay tax
 needs guidance

Lacks \$ to pay tax

What's his business -
How to deduct?

Diary - very complete
- expenses -

Feinsternwald

Alch - McCord wanted out

McC for Chile embassies
Israel

That they were Tapped -
∴ he could be dismissed

McCord sent unsigned letter to Caulfield

- sick letter
- don't fire Helms
- CIA defence can't be used
- I'll bring everyone down

Caulfield - letter to Dean

saw McCord 3 Times

no offer? perhaps Ch.ency

McC might have taped him -

F never met McCord before
 put up \$60M
 going to get RN

JK Eastland has file on F -

Ramsey Clark in this - ?

Rohblatt dangerous

now co-counsel
 for McCord -

JNM holding settlement w/ Demo -

Must close ranks -

JNM will tough it out -

Martha -

H must bring it up short -

shut up

stop being people

Leasoner - Magruder's man
 Bus Porter's acct

(Storm
 Cash to BP

pre 4/7 c. \$50,000

to GL 37,000 includes

Howard 8,000 Carby

Mardian 200 trip?

Don Hallett 400

JNM trip ~~was~~ 300 - 500

~~Magruder~~ - 400

Lionel Hampton 1000 cash
 1100

Walker man 400

Muc 1000

Post 4/7 (Campn Vids -
 5-8 to 5-16

GAO Knows

Porter COH 2000

got cash 11,000

Phil Juano 4400

NY Times ad

Odle 2000

to 4 to 8

✓ 2000

letters -

Rietz 200 + 450 750

bus price

(for Brill)
 5x 150

in support

of

Hampton

John Trip
 west -

Lobby got 5300

Returned 2000

3300

for William
 demonstrated
 punched FBI

Who ran 1701 -

Magruder saw JNM 2/day

H safe to say JNM - or sb

Sb says he was running it

JNM - It will turn
all of them
out -

CC + Shapiro
 Bill up in arms.

Ehler

That Spa Man healthy + 1st-hand

Spa Man

Spa P + O'B → H → Dobans

O'B → H - Mar H \$10M

all coming out

McC: latest Hank Greenberg
 LasV

Hunt - McC Lately

airplane fly by

CC mastermind

A Howard Hughes op.

Billingsley - if up to it
 L: don't call it off
 JIM orders
 don't go ahead

and out to L: π pardon

will corroborate McCord
 CBI hearsay -

NY - GJ - also = JUM
 2d WDC GJ
 Klein & to JUM
 for good K's

Klein's → Steve Sachs atty
 R a tax evader -

NY - JUM
 Hofgren as WH -
 Vesco - Gans - Vesco mfg -

\$201
 JUM gave apptmt
 as A.G.
 in T of \$200M

Ph: notes

March - Phoenix - cover story -
 hits CC & H
 NY Times -

Big front page 7 leak
 Cong excitement

Back to porch -

H: "Dean said
w. the country"

DS:

E on Ted Fielding
has much info

S: 1- Re-state Exec Priv
as crim. conduct

Never intended to cover it
No one immune to any
inquiry by GS or legis com
re act outside scope of
duties criminally -

C: 1- An investigator reports
to π

E & FF
damaging ©

2- π orders it be given US AT

3- Then HH anti-climax on it

S: Have π man interview Liddy

Reply: no pardon
only clemency comes in telling truth

It's key to W. Galt.
 He should persuade him

- Chitab -

JDM unbalanced
 then
 Indut wants to go to 1701
 drink
 disorg
 never und control
 wife

Jan 14, 1973
7pm

☒ -

Ed Magrider
& 2 attys
Jim Sharp
Jim Bierbauer

9/71 Sandwedge Carl Dean JSM

11/71 Mitch Lid Dean
L new man Sandw

12/71 Dean Lid Mag - L counsel

Dean & Lid have proposal
\$1 mil.

quite active

L: D said \$1 mil.

Charts & budgets.

4 meet - JSM rejects

4 meet a wk later $\frac{1}{2}$ mil
also rejected

JD: submit deal w/ Mitch

Lid & JSM - $\frac{1}{4}$ mil
JSM no

CC

Strachan primary contact

{ Copies of bud
TALKED to JSM

All nervous - Mag M. Sch
Strachan

JNM neg

No prob -> Strachan
Road is as OK higher
No knowl of higher ups -

only CC Strachan Dean
Howard

CC called - never said wiretap - "projects"

and
then

La Rue, Mitch & JSM
To Key Bixayne

{ presented Lid last proposal
Approved - conversation -
3 places Wgate McGor Fontainebleau

CC Needed info on L O'Brien

Tip plus other things v.

A "non-decision" "

THIS

Crackan informed - orally

"Liddy's project
He had Gadget
"6 bugs @ "etc

log 3/18 break in
report - junk

log - ~~synopsis~~ -
talked to JNM about
them -
a lot of junk

Liddy knew of Regret -

Gregory - Hunt -

Chauffeur another one
Ken Ritz
over to Liddy

Bar Porter - log man -

(Synopsis - JNM) "Jim Kim"
had only copy

photo of papers -

showed syn to JNM - He called L

chewed him out -

Shitty -

* Frachan saw synopsis

"I've got them here"

He may have read them - *

Fired \angle -
Kill threat -

3/26 - Out to laws -
Term > other activities

La Rue -

Frachan - walk back -
needed the op'n -

MM & JM

(bad quality - "I'll take care of
it")

Cliver - ph Fleming,

sex
El pubanased
Right up.

L on own motion went back in -

CC - Had to get O/B -

Full M. P. ID & 2 look-into
 Task to L - makes me nervous

Carried gun -

Dean

Howard
 & CC
 people

activities

lots of Secy's contacted

Not MR

ads, pictures

- After Clean - close to Hunt

only for call -

- USAF has more -

Reperjured self under imminity

Port June

Dean

Cross in 1944 -

M. S. L.

A over story

L. A. R. C.

Porter reperjured self

M. S. L.

W. S. L.

1/10 getting ready for 3d GS appearance

ID - leave me out of these AG off mts

loc "Cancelled" one mtg -

The mil dol mtg -

next mtg = $\frac{1}{2}$ mil

told GS - just elect'n to -

ID not in devel

was in on cover story

ID over-ex me (in diary)

feeding us GS info to us -
(They know where he got it -)
(above them)

Devin "destroy diary"
couldn't

money passed -

"The famous list"
1,500,000 dist of

La Rue & Hans know of it -

WM: don't talk -

H = A target
very much so

Implicated only by assoc'n -
hitting?

E =
rel. to Dean -

Rearden - aware / took docs
out of invest.
Powell More - The Sat. Events
Kleinert

La Rue - in on Tap -

Mardian in post-
[lost -
many counts

EXHIBIT No. 99

Conversation with AG Kleindienst, March 28, 1973

K. Kleindienst.

E. Ehrlichman.

E. The President wanted me to cover with you. Are you on an outside line?

K. I'm at my parents' house.

E. Oh, fine, OK, so it's a direct line? Number one, he wanted me to ask you those two things that I did yesterday about the grand jury and about Baker. He had me call Pat Gray and have Pat contact Lowell Weicker to ask Weicker about this second story that he put out yesterday to the effect that he had information about White House involvement. And Weicker told Gray that he was talking there about political sabotage and not about the Watergate.

K. About the Segretti case?

E. Yeah, and that he was quite vague with Pat as to what he had.

K. I called him also, you know, after I talked to the President on Monday.

E. Well, the President's feeling is that it wouldn't be too bad for you in your press conferences in the next couple of days to take a swing at that and just say we contacted the Senator because we continue to exercise diligence in this thing and we're determined to track down every lead and it turns out he doesn't have anything.

K. I would really at this delicate point question the advisability of provoking, you know, a confrontation with Weicker. He's essentially with us, he and Baker get along good.

E. Is he?

K. Baker has had a long talk with him and told him to shut up and said that he would and I talked with him on Sunday after he said he didn't have anything but he's kind of an excitable kid and we just might not want to alienate him and I think that if he finds himself in a direct word battle with the White House and me and loses face about it I think in the long run we might need that guy's vote.

E. I see. You don't think that this is evidence of alienation to the point of no return then?

K. No. You mean by Lowell?

E. Yeah.

K. No I don't. He's pretty disenchanted with the whole concept of it. Connecticut politician——

E. Well, use your own judgment on it, Richard.

K. On TV I guess 7 or 8 times this Sunday when I finished my testimony before my appropriations committee all three networks I referred to the letter that I sent to Sirica and I also emphasized and repeatedly said (a) the President wants this investigated, let the chips fall where they will but secondly that if anybody has any information we not only want it we expect to get it so we can investigate it and if necessary indict other people and that anybody who withholds information like that is obstructing justice. But I did not refer to Weicker. And my judgment right now is not to do so.

E. OK, OK.

K. If he gets to that point, the hell with him.

E. Well, our uneducated and uninformed impression was that he was trying to develop an attack line here on the White House or the President.

K. If that . . . if we would conclude that that is what he's up to that he is completely alienated then I say we've got to take him on.

E. Well, keep track of that and you'll be talking to Baker and you get a feel of it. OK, now, the President said for me to say this to you. That the best information he had and has is that neither Dean nor Haldeman nor Colson nor I nor anybody in the White House had any prior knowledge of this

burglary. He said that he's counting on you to provide him with any information to the contrary if it ever turns up and you just contact him direct. Now as far as the Committee to re-elect is concerned he said that serious questions are being raised with regard to Mitchell and he would likewise want you to communicate to him any evidence or inferences from evidence on that subject.

K. With respect to them, unless something develops with these 7 people who were convicted all those people testified under oath before a grand jury and their testimony was not contradictory and until something comes along I think this fellow McCord if he has something besides his own testimony in addition to that to refute the sworn testimony, then you'd have to do it. The comment that I made yesterday about McCord was that it takes—

E. Take him for what he is.

K. He's facing a long jail sentence and he has all kinds of motives to say all kinds of things but I also pointed out that most of the people, well, these people who were involved were interviewed by the FBI and they testified under oath before a grand jury to the contrary of what McCord is saying. But I understand the President's direction.

E. He's concerned about Mitchell.

K. So am I.

E. And he would want to have a private communication from you if you are possessed of any information that you think he ought to have with regard to John.

K. Now he ought to think about John—McCord or Liddy or Hunt or any of these 7, you know, testify under oath specifically to their knowledge they have a basis for saying so that Mitchell or any of these guys knew about it; we have a very serious problem. Possible perjury, possibility of going back to the grand jury, they have a grand jury determine when anyone should be indicted. When you talk about Mitchell and me that really creates the highest conflict of interest. And we want to give some thought to having in such an event having a special prosecutor.

E. What is the procedure for that?

K. Well, I don't know. I think that the President could appoint somebody as a special prosecutor to direct the FBI to cooperate with him, giving them an opportunity to hire some attorneys, you know, on his staff and then just have complete authority to have his own investigation and if there's evidence that comes out that there were acts of criminal behavior have them presented to a grand jury then proceed with it.

E. Could you have somebody brief out how that's done? Just so we know? And the question would be whether the President or Sirica or you or you know who actually does it?

K. Well it wouldn't be the judge. The judge has no jurisdiction. I think it would be the President.

E. OK.

K. But it has its own problems that by doing that you in effect say publicly well OK the Department of Justice and the Attorney General the U.S. Attorney and the FBI all corrupt. I've now found that out and have got to get myself a new—

E. Of course we've resisted that right straight through.

K. I think that we have to do it in the event that it appears that Mitchell himself is going to be involved in any further litigation because all the men who are doing this who have worked for him been appointed and I think if it came down to him that that's what I would seriously start thinking about, recommending.

E. Also this business of the grant of immunity to witnesses before the grand jury, is that peculiarly in the province of the court?

K. No, that's the Department of Justice.

E. That is?

K. In almost every criminal case of any consequence when we convict somebody the next thing to do is haul them back in before a grand jury to find out what they know. You have to do it in this case—always going to do it. Quite a limitation posed on us John is that—who couldn't cut it (inaudible). But you have two really distinct situations here. You have the Watergate inquiry by Senator Ervin, that's the political side of it. And then you have the obligation imposed upon us to investigate criminal conduct. Two separate distinct operations. They're getting all fuzzed up.

- E. What progress are they making right now, have you had a reading on it?
- K. Well, the last time I talked to Henry Monday because of Sirica's sentencing procedures it got a little boxed up. Sirica is really lousing this thing up. I don't know. I'm going to talk to Petersen this morning and I'll call you back.
- E. OK, great, that's all I had on my list.
- K. Thanks, John.
- E. Now, he said that there was a possibility he'd like to see you in San Clemente Saturday morning first thing. So you might just keep that in the back of your mind. Don't rearrange any of your schedules or anything but I'll let you know if that materializes. We'd send a chopper up to LA for you. Thank you.
- K. OK.

EXHIBIT NO. 100

Notes of a meeting with Herb Kalmbach, April 6, 1973,
in San Clemente, California approximately Noon

Kalmbach was very concerned about the effect of his testimony with regard to raising money for the Watergate defendants upon Kalmbach's reputation and family.

It is his recollection that John Dean telephoned him to ask him to do so upon the representation that both Bob Haldeman and John Ehrlichman had OKayed his doing so.

Kalmbach assumed that he would not be asked to do anything illegal or improper, he had no occasion to check the law nor to inquire into the disposition of the funds, he arranged for a "Mr. Rivers" to carry the money from California to Washington and to deliver it according to John Dean's instructions.

Kalmbach does not know to this day how the money was used. He was not willing to disclose to me who he raised the money from but my impression is that he raised it from two individuals who paid him cash and desired passionately to remain anonymous.

Kalmbach has the impression that the money was to be used for compassionate purposes, that is, the support of the families of the imprisoned defendants, and that the money was being furnished to them by way of a moral obligation for the well-being of the families. He understands that some of the money was to be used for attorneys' fees for the men either directly or indirectly. Kalmbach has retained the services of an attorney named Paul O'Connor of Phoenix, a long-time friend, and he asked that I see Mr. O'Connor on his first visit to Washington as a courtesy. I agreed to do so.

* * *

EXHIBIT No. 101

28 June 1972

MEMORANDUM FOR RECORD U

On June 23 at 1300 on request I called with Director Helms on John Ehrlichman and Robert Haldeman in Ehrlichman's office at the White House.

Haldeman said that the "bugging" affair at the Democratic National Committee Hqs at the Watergate Apartments had made a lot of noise and the Democrats were trying to maximize it. The FBI had been called in and was investigating the matter. The investigation was leading to a lot of important people and this could get worse. He asked what the connection with the Agency was and the Director repeated that there was none. Haldeman said that the whole affair was getting embarrassing and it was the President's wish that Walters call on Acting FBI Director Patrick Gray and suggest to him that since the five suspects had been arrested that this should be sufficient and that it was not advantageous to have the enquiry pushed, especially in Mexico, etc.

Director Helms said that he had talked to Gray on the previous day and had made plain to him that the Agency was not behind this matter, that it was not connected with it and none of the suspects was working for, nor had worked for the Agency in the last two years. He had told Gray that none of his investigations was touching any covert projects of the Agency, current or ongoing.

Haldeman then stated that I could tell Gray that I had talked to the White House and suggest that the investigation not be pushed further. Gray would be receptive as he was looking for guidance in the matter.

The Director repeated that the Agency was unconnected with the matter. I then agreed to talk to Gray as directed. Ehrlichman inquired I could do this soon and I said I would try to do it today.

Upon leaving the White House I discussed the matter briefly with the Director. On returning to the office I called Gray, indicated that this was a matter of some urgency, and he agreed to see me at 1430 that day.

Vernon A. Walters
Lieutenant General, USA

EXHIBIT No. 102

Conversation with Pat Gray, March 7 or 8, 1973

E. Ehrlichman
G. Gray

E. Been testifying today?

G. Yeah, I'm having a ball. Let me just tell you an unusual development that happened today I think you'll be interested in and it's not a disaster or anything, it's just a total surprise I think to everybody including me and all the committee members. Over the weekend I had prepared a rather forceful statement saying that this function of the committee was . . . the function of this committee was to look into my qualifications and to examine my procedural conduct of the Watergate not to get into substance that this had been assigned to the Ervin select subcommittee and they would erect the proper safeguards to protect those who were innocent and were just standbys in this whole matter here of this criminal offense and I talked about constitutional due process and the right to privacy and all that kind of stuff. What the hell should turn up this morning to the chairman of the committee and each member of the committee and then a copy was delivered to me in the hall as we were walking into the hearing room but a three page letter from the ACLU practically saying the same damn thing. So what has happened is that we got a state of consternation up there right now with the ACLU and the FBI in the same bed. And I don't know what the hell they're going to do on that. I wanted you to know that that development occurred and I also got another letter today along the same lines from a professor who's pretty highly respected and I talked with Jim Eastland. We're going to throw that letter into the hopper tomorrow, too. I'll read that—that's one of the first things I'll do tomorrow morning.

Another thing I want to talk to you about is that I'm being pushed awfully hard in certain areas and I'm not giving an inch and you know those areas and I think you've got to tell John Wesley to stand awful tight in the saddle and be very careful about what he says and to be absolutely certain that he knows in his own mind that he delivered everything he had to the FBI and don't make any distinction between . . . but that he delivered everything he had to the FBI.

E. Right.
G. And that he delivered it to those agents . . . this is absolutely imperative.
E. All right.
G. You know I've got a couple of areas up there that I'm hitting hard and I'm just taking them on the attack.
E. OK
G. I wanted you to know that.
E. Good. Keep up the good work, my boy. Let me know if I can help.
G. All right. He can help by doing that.
E. Good, I'll do it.

Conversation with John Dean same day immediately following

E. Ehrlichman
D. Dean

D. Hello.
E. Hi. Just had a call from your favorite witness.
D. Which is?
E. Patrick J. Gray
D. Oh, really?

- E. And he says to make sure that old John W. Dean stays very very firm and steady on his story that he delivered every document to the FBI and that he doesn't start making nice distinctions between agents and directors.
- D. He's a little worried, is he?
- E. Well, he just doesn't want there to be any question. He says he's hanging very firm and tough and there's a lot of probin' around.
- D. Yeah, he's really hanging tough. You ought to read the transcript. It just makes me gag.
- E. Really?
- D. Oh, it's awful, John.
- E. Why did he call me? To cover his tracks?
- D. Yeah, sure. I laid this on him yesterday.
- E. Oh, I see. OK.
- D. I laid it on him to, you know, to fuse the issue so I don't have any idea what he said up there today.
- E. I see. It was a funny phone call. Said he was going in to object to the jurisdiction of the group to get into the substance and that their own jurisdiction was to . . . was procedural efforts and his competence and he says the ACLU put a letter in to the same effect.
- D. Yeah. Wally picked up an interesting one on the grapevine today that planned strategy now is to proceed in this one as they did in the Kleindienst.
- E. Down to the point of calling you?
- D. Down to the point of calling me and——
- E. Let him hang there?
- E. Well I think we ought to let him hang there. Let him twist slowly slowly in the wind.
- D. That's right. I was in with the boss this morning and that's exactly where he was coming out. He said I'm not sure that Gray's smart enough to run the Bureau the way he's handling himself.
- E. Well, OK, you're on top of it. Good.

EXHIBIT No. 103

Conversation with Pat Gray

G. Gray.

E. Ehrlichman.

E. Hi, Pat.

G. John, I thought I'd better just give you a report. They worked me over plenty today but I went on the offensive pretty hard and as I told John Dean in my noon report to him to look at the transcript and we may have even won some of the public relations battle today. I don't know. This afternoon was easier from the standpoint of questions than this morning but I defended vigorously the right of the Counsel to the President in his official capacity to be present at those interviews. I defended vigorously the right of an employer to insist that his counsel be present at interviews of his employees particularly when there were implications that these employees may have been involved in hanky-panky that would reflect adversely on the employer.

E. Is that going to make problems for the Bureau and other contexts?

G. No. No. You see, it's a thing where this is happening more and more even though I have to say for the record our preference is that this not occur and the norm is that it does not occur but in these past few years it has been occurring more and more and more and it's just the thing that we have to face up to.

E. People being interrogated having counsel?

G. Yeah. And we got into the thing, you know, we brought it out and hit it hard oh at least three times today with three different Senators. In fact, even Jim Eastland hit it for me in his questioning about our investigation of the Democrats and the little red black box and how many times it took us to get O'Brien and all that kind of stuff and the fact that they put their counsel in the interview too.

E. Good.

G. Now, just from sizing this thing up it looks to me like this probably. Tunney said to me today that the last thing he said when he was closing out his questioning is that he's going to move in the committee in their executive session that John Dean be called and of course I didn't respond in any way at all because that's their business and I told John I wanted the President to hang in there on that executive privilege and I told Eastland that in no way can I see a man with an attorney-client privilege—the President—being called on and I told John to make sure that you and the President understood that he ought to stand strong and tall in that saddle and if this—don't do anything to save me. That's what I'm saying.

E. I get it.

G. Of course he's got to make the judgment. I can't.

E. Do you think that there is enough votes on the committee to hold you hostage?

G. No, I don't. My feeling right now is that if we can keep those Republicans together we'll be alright. We'll probably be able to defeat that kind of a motion but you know I haven't asked did the White House or the Department of Justice have anything to do with your confirmation hearings because we're trying to keep it nonpolitical but now I'm beginning to think that maybe a call to Roman Hruska or however you all do that but I wouldn't let it get out among the guys at the lower level at all at the White House in making any move or it'll backfire.

E. Do you think on the Dean subject, huh?

G. I think on the fact that they ought to stay together on this thing and that this is the counsel to the President, this is attorney-client privilege—god-damn constitution. What the—they treat the Berrigans one way and they want to do it differently here. I said that to some of the Republican Senators and to the chairman.

- E. Good. I got a call from the press room a little while ago about whether I had had any phone conversations with you about the—they got an inquiry.
- G. I got them exactly, John. I've got the exact accounting of it and I think we had five calls during the whole thing and I saw you twice and what I have stated, you know, they got to this today and I said everyone of these were procedural. I advised both Mr. Ehrlichman and Mr. Dean that we were going to conduct this investigation with the full aggressiveness and vigor within the capabilities of the FBI. We were going to run it right to wherever it led and I said both of them agreed with me completely. I had no hindrance, no.
- E. How did my name come into it?
- G. Well, they asked me pointblank, just straight out. Did you have a telephone conversation at any time with Mr. Ehrlichman period. Just straight out. You know, those meetings were procedural meetings.
- E. Yeah.
- G. And they asked me who I met with with you and my recollection was there was nobody. You and me period. And that's going to be my testimony.
- E. And when you said procedural you meant with relation to how you were going to conduct the Watergate investigation.
- G. Right. And I said this was informative only and I emphasized and repeated that I got no direction, no guidance, no hindrance, no impedance, no handicaps whatsoever from anybody and that there was agreement that this is the only way that it could be done. I didn't say, you know, that the President came out later and made a public statement on it. That's for one of those Republican Senators to——
- E. OK.
- G. I counted them today. It's 5 telephone calls to you and twice I saw you. I'll give you a note on it.
- E. Alright. Did they ask who initiated the calls or anything of that kind?
- G. No.
- E. OK. Very good.
- G. I'll send you over a note. You'll have it first thing tomorrow. Date and time.

EXHIBIT No. 104

WILKINSON, CRAGUN & BARKER

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JOHN M. FACCIOIA
PHILIP A. NACKE
H. MICHAEL SENLER
THOMAS E. WILSON

July 27, 1973

* Not admitted in the
District of Columbia

Honorable Sam J. Ervin, Jr.
Chairman, Senate Select Committee
on Presidential Election Activities
United States Senate
Washington, D.C.

Dear Senator Ervin:

This letter is another appeal to your Committee to act in a spirit of fairness which requires the clearing up of the misleading record made during the appearance of Honorable Maurice H. Stans on June 12, 1973, over nation-wide television.

I addressed a hand delivered letter to you on July 5, 1973, together with enclosures. Copies are attached. As noted in that letter even though Mr. Stans denied that he had ever seen the Magruder memo (copy attached) and stated there was no such political fund in the Department of Commerce, the media, based upon your hearing record, erroneously referred to a "Million Dollar Secret Fund", which in fact did not exist.

In addition to the letter from Richard Whitney and two affidavits from former Secretary of Commerce for Administration Larry A. Jobe, furnished earlier, we enclose here-with another affidavit from Joseph E. Casson, former executive assistant to Mr. Stans at Commerce, stating that he had advised Mr. Magruder's office that no such political fund existed or was contemplated. Moreover, Mr. Casson has told me that he never discussed the fund inquiries with Mr. Stans and that no one else did in his presence.

It is abundantly clear that Mr. Stans had never seen the Magruder memo prior to his testimony and that there was no such political fund. If he had been asked about the memo in staff interviews, he could have clarified the matter. That was not done, however. Mr. Stans was asked to identify a memo

Honorable Sam J. Ervin, Jr.
July 27, 1973
Page Two

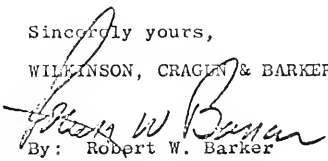
he had never seen. Later your committee had Mr. Magruder affirm he had written the memo but did not pursue any facts of the non-existent political fund. As a result, the public has been misled to Mr. Stans' damage and embarrassment.

Feeling that the only way to correct this matter fairly is a clarifying statement in your public and televised hearings, we suggested to staff counsel that the record be cleared up without delay in accordance with the enclosures. (see proposed statement furnished on July 11, 1973)

We again request this action be taken without further delay.

Sincerely yours,

WILKINSON, CRAGG & BARKER


By: Robert W. Barker

cc: Each Member of the Committee
Hon. Maurice H. Stans

WILKINSON, CRAGUN & BARKER

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PHILIP A. NACKE
H. MICHAEL SEMLER
THOMAS E. WILSON

* Not admitted in the
District of Columbia

July 27, 1973

David Dorson, Esquire
Senate Select Committee on
Presidential Campaign Activities
Room 1418
New Senate Office Building
Washington, D.C.

Dear David:

As per our talk, I send you a copy of the
most recent letter we have written on the Commerce Fund
problem.

I hope in fairness that you can set the record
straight. There was no such secret political fund. I
have been assured by numerous people that the discretionary
fund of the Department of Commerce was used solely for
authorized governmental purposes.

Sincerely yours,

WILKINSON, CRAGUN & BARKER

By: Robert W. Barker

Enclosure

cc: Rufus Edmiston, Esquire ✓

C
O
P
Y

WILKINSON, CRAGUN & BARKER

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PHILIP A. NACKE
H. MICHAEL SEMLER
THOMAS E. WILSON

July 5, 1973

Not admitted in the
District of Columbia

Honorable Sam J. Ervin, Jr.
Chairman, Senate Select Committee
on Presidential Election Activities
United States Senate
Washington, D. C.

Dear Mr. Chairman:

When the Honorable Maurice H. Stans appeared before your Committee he was interrogated about a memorandum dated July 28, 1971 (Committee Exhibit 27) from Jeb S. Magruder to the Attorney General concerning an alleged discretionary fund in the Department of Commerce which was reportedly available for activities beneficial to the President's re-election (Tr. 1638). Even though, prior to his testimony, Mr. Stans had met with your staff on two occasions to review the scope and subject matter of his testimony he was asked about this memorandum in the public hearing without prior notice or chance to refresh his recollection concerning the subject matter of the memo. He testified that he had not previously seen the document during his administration. He further stated that there was no fund in the Department of Commerce, apart from authorized budgeted funds, and certainly no fund set aside in the Department to help in the election campaign. This unfortunate episode occurred, as you know, over nationwide television.

Based on this record, the media referred to the "Million Dollar Secret Fund". For example, the New York Daily News had front page headlines which referred to the "fund" and on page two, the headlines ran "Commerce Department Fund For Nixon is Revealed". Press service reports on the nonexistent "Fund" were carried throughout the nation, with little or no recognition being given Mr. Stans' denial of the existence of such a political fund. We feel that the "surprise" approach to the interrogation in great part contributed to this unfairness.

Honorable Sam J. Ervin, Jr.
July 5, 1973
Page Two

We have now received copies of clarifying information from two persons well acquainted with this matter and who make clear that there was no secret political fund. I attach copies of their communications:

1. A copy of a letter from Dick Whitney to Mr. David Dorsen of your staff confirming that there was no such fund and that Mr. Stans had not been made aware of the discussions he had with Magruder.

2. A copy of two affidavits from Larry A. Jobe, former Administrative Assistant Secretary of the Department of Commerce, indicating that there was no such fund and that Mr. Magruder had been so advised.

This adverse publicity is very injurious to Mr. Stans' reputation and material to his right to a fair trial in the Vesco case in New York. We suggest that this unfair and unfounded adverse and damaging publicity be corrected to the extent possible, as is usually done in a libel case, by publication of equal prominence.

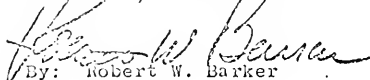
Accordingly, as part of your hearing, on behalf of Mr. Stans, I respectfully request that this letter and the communications referred to above be read into the record of your hearings over nationwide television. This might be done by either (1) myself as counsel for Mr. Stans, or (2) the Chairman, a Committee member or one of its Staff.

We strongly urge that this be done at the outset of your hearings when they resume next week, so that there be as little time as possible between the unfair and injurious suggestions that such a political fund existed and this clarifying statement to the contrary.

We shall be pleased to discuss this matter with you and to cooperate in any way possible to clear up this unfortunate situation.

Sincerely yours,

WILKINSON, CRAGUN & BARKER


By: Robert W. Barker

Enclosures

Richard P. Whitney
21 West Kirke Street
Chevy Chase, Maryland 20015
June 25, 1973

Mr. David Dorsen
Assistant Counsel
Senate Committee on Presidential Activities
U. S. Senate
Washington, D. C.

Dear Mr. Dorsen:

Although it has been several weeks since I met with you, I did want to confirm in writing a few of the points we covered in our conversation. Specifically, those points which pertained to the July 28, 1971 memorandum from Mr. Magruder to John Mitchell indicating the existence of a \$1,000,000 political fund in the Department of Commerce.

The memorandum contained three paragraphs. The first paragraph indicated that I was the Special Political Assistant to the Secretary. In point of fact, I was Executive Assistant to the Secretary and my duties were varied.

The second paragraph of the memorandum indicated that a \$1,000,000 fund existed in the Department of Commerce for political purposes. As I told you, no such fund ever existed or was contemplated.

The third paragraph implied that Mr. Stans knew about this fund and would help other departments to set up their own fund. As no such fund existed, I do not know how Secretary Stans could possibly have known about it. I certainly never discussed any such idea with Mr. Stans.

Very truly yours,

Richard P. Whitney

RPW:jg

cc: Mr. Robert W. Barker

June 18, 1973

Senator Samuel J. Ervin, Jr.
Chairman
Senate Select Committee on Presidential
Election Activities
Washington, D.C.

Dear Mr. Chairman:

My name is Larry A. Jobe and I presently reside at 6247 DeLoache, Dallas, Texas. At this time, I am Managing Partner of the Dallas office of Alexander Grant & Company, Certified Public Accountants.

From March 1969 until June 1972, I served as Assistant Secretary for Administration in the Department of Commerce. In that capacity I had responsibility for budget matters for the Department, among other functions.

During the testimony of Secretary Stans on Tuesday, June 12, 1973, a memorandum was introduced into the record. Secretary Stans was questioned about this particular memo and asked whether he knew anything about it.

I looked at the replay of this testimony on the evening of June 12, 1973. The memo, which was read and introduced into the record, was from Jeb Stuart Magruder to John N. Mitchell. This memo, dated July 28, 1971, indicated that Dick Whitney, then Executive Assistant to Secretary Stans, had informed Magruder that Secretary Stans had at his disposal a discretionary fund of approximately \$1 million within the Department of Commerce. The memo stated that this fund was available for use for certain activities which would be helpful to the reelection of the President. The memo went on to ask Mitchell whether Secretary Stans should talk with other cabinet officers to assist them in setting

up such a fund. At the bottom of the memo, there was a place for Approved, Disapproved or Comment.

I immediately recalled seeing this memorandum at the time I was Assistant Secretary of Commerce for Administration. Sometime prior to Mr. Whitney's leaving the Department in August (1973) Mr. Whitney came into my office with the above memorandum.

At that time, I took a great deal of time and effort to describe to Mr. Whitney the various funds which we did have available to the Department of Commerce. I told him that we had no funds that could be used for political purposes. I stated that we were totally constrained to use our funds only for those purposes for which they had been appropriated by the Congress. Mr. Whitney understood this fully and agreed with this conclusion.

As I recall, Mr. Whitney, at this time, requested that I then meet with Mr. Magruder in order to clarify the matter. Subsequently, I did meet with Mr. Magruder and had the similar discussion with him that I had with Mr. Whitney.

Mr. Magruder did not suggest any further course of action. I never heard more of the matter and dismissed it from my mind.

So far as I am aware, Mr. Stans had never seen that memorandum. I never showed it to him. I never mentioned the fact that I had seen such a memo.

The memorandum was not brought to Secretary Stans' attention because I did not think it necessary to bother him with it. In my mind the matter was properly disposed of.

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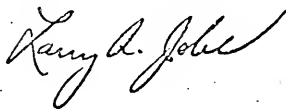
In 1971 we did establish a Secretarys' Reserve for departmental purposes. As I recall, the reserve was set at 1% of the general and administration expenses within the Department. The Secretary had the authority to designate the use of these funds; but for Departmental purposes only. I was given the responsibility to administer this fund working with the heads of the bureaus and agencies involved and the Secretary. As I recall, we did do a number of studies with these monies. Funded by this means were such projects as a multinational economic study, an analyses of the machine tool industry, experimental technology studies and establishment of a Patent Office production control system. Much of it was used by Secretary Stans' successor

after he had left the Department.

A study describing this fund and recommending its institution was prepared by my staff, competent career civil servants. The details of all projects in this fund were handled for me through the Office of Budget and Program Analysis, in the Department. This unit also monitored these projects.

I presume that this is the fund which was misconstrued in conversations between Magruder and Whitney. I would be pleased to answer any further questions which your Committee or its staff may have regarding this matter.

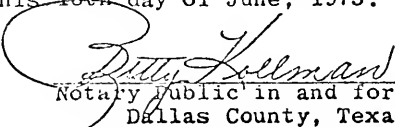
Sincerely yours,



LAJobe

cc: Maurice H. Stans

Sworn and subscribed to this 18th day of June, 1973.



Notary Public in and for
Dallas County, Texas

June 29, 1973

Mr. David Dorson, Assistant Chief Counsel
Senate Select Committee on Presidential
Election Activities
1418 New Senate Office Building
Washington, D.C. 20510

Dear Mr. Dorson:

On June 18, 1973, I sent a statement to the Committee regarding a matter which it is presently investigating. My letter related to a memorandum from Jeb Stuart Magruder to John N. Mitchell suggesting that Secretary Stans had at his disposal a discretionary fund of approximately \$1 million within the Department of Commerce. My letter of that date fully describes my recollection of events surrounding that memorandum as I remembered them at that time.

Since that time, additional information regarding this matter has come to my attention and I would like to amend my statement to include this information.

On the second page of my letter to the memorandum in the fifth paragraph, I stated that: "So far as I am aware, Mr. Stans had never seen that memorandum. I never showed it to him. I never mentioned the fact that I had seen such a memo." I now find that I had brought this matter to his attention, through a memo of my own, dated January 19, 1972. The purpose of this statement is to correct any misleading implication which I may have made in my prior letter.

- - - - -

On Tuesday, June 26, 1973, I received a call from Mr. Robert Barker, attorney for Maurice H. Stans. Mr. Barker informed me that Arden Chambers, Mr. Stans' secretary, had been to Minnesota to review certain of his files in connection with another matter. He explained that in that review she, coincidentally, found a memo which I had written to Secretary Stans which relates directly to the subject matter of the

-2-

Magruder-Mitchell memo. Mr. Barker stated that Mr. Stans had also forgotten about the memo I had written and was totally unaware of its existence. He read this memorandum to me over the phone. I recalled writing the memo and receiving an answer written on the face of the memorandum from Mr. Stans. I am attaching a copy of that memorandum for the Committee's information.

This memorandum was written to Secretary Stans on January 19, 1972. I received his reply on January 26, 1972. It is significant to note that Secretary Stans had already submitted his resignation to the President at that time and that he actually left the Department a few days after his reply to me.

At this time I cannot explain the reasons for the time lapse between the writing of the original memorandum on July 28, 1971 and my memo to Secretary Stans of January 19, 1972.

Apparently I wrote this memorandum because I felt I had a responsibility to follow-up for Mr. Magruder after I had my meeting with him. To follow-up, I wrote this particular memorandum.

As far as I remember, after receiving Secretary Stans' reply, I never discussed the matter with Mr. Magruder or others thereafter. I do not recall ever discussing Secretary Stans' reply with him. I forgot about the memo after receiving his reply and, apparently, let the matter drop.

Again, I think it is important to point out that the one percent Secretary's reserve we had established has been misconstrued. This fund was never used for anything except activities related to the Department of Commerce and for projects consistent with the manner in which Congress had appropriated the funds.

I have discussed this matter with Messrs. Gray and Reissler of the Federal Bureau of Investigation in Dallas. In addition, I have discussed this matter with two members of the Select Committee Staff, Mr. Wayne Bishop and Mr. Michael Herschman.

Coincidentally, the date on the second page of my prior statement referring to Mr. Whitney's leaving the Department of Commerce should have been August 1971, not August 1973.

-3-

Should you have any further questions regarding this matter, please let me know.

Kary A. Jobe

LAJobe
bk

cc: Mr. Robert Barker

Sworn and subscribed to this 29th day of June, 1973.

Betty Koellman
Notary Public in and for
Dallas County, Texas

2966

ROBERT W. BARKER

1735 New York Ave., N.W.

Washington, D. C. 20006

(202) 833-9800

6.26.73

hang -

for your information

and use.

RECEIVED

JUN 28 1973

ALEXANDER GRANT & CO.

BW

January 19, 1972

Secretary Stans

*Can you get
me out of this?
Or should I quit
foster?
MKS
1/26/72*

Several months ago, Dick Whitney discussed with Chet Magruder the fact that the Secretary of Commerce had established a "discretionary fund." Dick indicated that such funding available to a Cabinet Officer could be very helpful during the course of the campaign. I presume Dick was talking about the 1 per cent reserve of S&E which we had each agency establish.

Apparently, Dick volunteered your services to brief other Secretaries so that they would have similar flexibility to respond to key initiatives and programs during the election year. Based on this conversation, Magruder sent a memorandum to the Attorney General, who approved your proceeding to brief other Cabinet Officers on the establishment of such a fund.

The Committee for the Reelection of the President is now wondering about the status of this effort. I have two questions:

1. Were you aware of such a commitment on your part?
2. If so, the Committee is interested in knowing the status of your conversations with other Cabinet Officers.

I will be happy to do anything further in this matter that you desire.

Larry
Larry R. Jobe

CONFIDENTIAL

July 28, 1971

CONFIDENTIAL

MEMORANDUM FOR THE ATTORNEY GENERAL

Dick Whitney who is Secretary Stans' political Special Assistant spent some time with me discussing 1972. One idea which he brought up might be useful in other departments.

The Secretary has built up a discretionary fund at Commerce that will total approximately \$1,000,000. He is using this fund for conferences, hiring, and other activities that will be beneficial to the President's re-election.

- If you feel it is appropriate, Secretary Stans might discuss this concept with other Cabinet Officers to see if they can develop the same kind of fund within their own departments.

Approve _____ Disapprove _____ Comment _____

JES B. MACPHERSON

cc: Mr. Haldeman

JSM:ger

JSM Chron

JSM AG File

CONFIDENTIAL

AFFIDAVIT of JOSEPH E. CASSON

CITY OF WASHINGTON)
) SS.
DISTRICT OF COLUMBIA)

Joseph E. Casson, being duly sworn, deposes and says as follows:

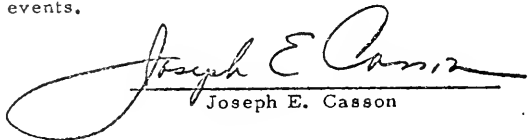
1. I am a member of the Bar of the District of Columbia and I am currently engaged in the private practice of law.
2. From approximately March of 1971 until approximately February of 1972 I served in various administrative capacities as Assistant and Executive Assistant to Secretary of Commerce Maurice H. Stans.
3. During the late Summer and/or early Fall of 1971, I received at least two phone calls from individuals at the White House asking me to provide information on an alleged "fund" at Commerce which was to be used for political purposes. In each instance the caller indicated that Mr. Magruder's office wished information on the fund for application to other Departments and Agencies. My recollection as to the callers is unclear, but one of the callers may have been a Mr. Porter.
4. In each instance I informed the caller that no such "fund" existed or was contemplated and that his information in this regard was incorrect and unfounded. I further explained that while certain general purpose monies were included in the Commerce budget, they could only be used for Commerce related

activities and not for political purposes. I further advised each caller that I could not envision the practicality of establishing budgeted general purpose monies in other Departments where they did not already exist.


5. After receiving each of these calls, I informed Assistant Secretary of Commerce for Administration Lawrence Jobe of their occurrence and indicated my feeling that someone in the Department's Administrative section should undertake to clear up these misconceptions concerning the Department's budgeted funds. At some point during this period he assured me that he intended to have a meeting with Mr. Jeb Magruder in order to put a stop to the matter. It is my recollection that I was advised that such a meeting was held. Thereafter, to my recollection, my office received no further inquiries on this matter.

6. I never informed Secretary Stans of these events at any time prior to June 1973 because I believed that the matter had been satisfactorily terminated and also because it became apparent to me that the initial misconception arose out of an inopportune conversation by Mr. Richard Whitney, my co-worker, and I saw no purpose in aggravating his embarrassment.

7. The information herein is based solely on my personal recollection of these events.


Joseph E. Casson

Subscribed and sworn to before me
this 23rd day of July 1973.


Notary Public
My commission expires: 6/30/78

District of Columbia

Statement for the Record

Mr. Chairman, I would like to make a correcting statement for the record. It deals with the testimony of Mr. Maurice H. Stans when he appeared before the committee on June 12. At that time he was asked to identify a memorandum dated July 28, 1971 from Jeb S. Magruder to the Attorney General concerning an alleged \$1 million fund available in the Department of Commerce for political purposes in 1971. The memo suggested that Secretary Stans discuss with other cabinet officers the development of such a fund in their departments. At the hearing on June 12 Mr. Stans denied any knowledge of the memorandum and testified that there was in fact no such political fund in the Department of Commerce. Later when Mr. Magruder was before this committee he acknowledged that he had written the memorandum.

When Mr. Stans and Mr. Magruder were interrogated about the memorandum it had just come to the attention of the staff. Time had not permitted the verification of the facts alleged in the memorandum. Since that time, however, the staff has been able to investigate the matter further. Its representatives have talked with Mr. Richard Whitney, former Executive Assistant to Mr. Stans, who is mentioned in that memorandum, and with Mr. Larry A. Jobe, former Assistant Secretary of Commerce for Administration, who had supervision over budgets and funds at the time. We have received a letter from Mr. Whitney and two affidavits from Mr. Jobe. At this point I ask that the letter and the two affidavits be made part of the record.

-2-

Both Mr. Whitney and Mr. Jobe have made clear that there was in fact no such political fund in the Department of Commerce. They also make clear that Mr. Magruder's memorandum was not brought to Mr. Stans attention; that Mr. Magruder was advised that there was no fund in the Department of Commerce which could have been used for political purposes. While there were discretionary funds in the Department for authorized governmental purposes, they could not be used in the manner suggested by Mr. Magruder. Further, Mr. Whitney and Mr. Jobe make clear that the subject of the Magruder memorandum was never brought to Mr. Stans attention until a few days before he left the Department of Commerce.

Mr. Chairman, in fairness to Mr. Stans and in the interest of accuracy, the record should reflect that the committee now is satisfied from the evidence presently available to us that:

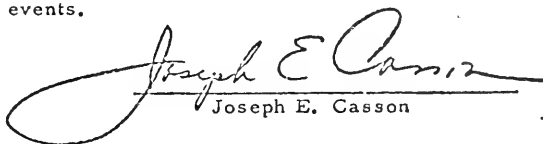
1. Mr. Stans did not see the Magruder memorandum until it was shown to him at the hearing on June 12.
2. The Magruder memorandum was never discussed with Mr. Stans by Mr. Whitney.
3. Mr. Magruder was advised by Assistant Secretary Jobe that there was no fund for political purposes in the Department of Commerce.
4. Mr. Stans was not informed of the subject raised by the Magruder memorandum until six months later, a few days before he left the department and took no action of the kind requested in the memorandum
5. No funds of the Department of Commerce were used for

activities and not for political purposes. I further advised each caller that I could not envision the practicality of establishing budgeted general purpose monies in other Departments where they did not already exist.

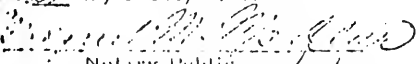
5. After receiving each of these calls, I informed Assistant Secretary of Commerce for Administration Lawrence Jobe of their occurrence and indicated my feeling that someone in the Department's Administrative section should undertake to clear up these misconceptions concerning the Department's budgeted funds. At some point during this period he assured me that he intended to have a meeting with Mr. Jeb Magruder in order to put a stop to the matter. It is my recollection that I was advised that such a meeting was held. Thereafter, to my recollection, my office received no further inquiries on this matter.

6. I never informed Secretary Stans of these events at any time prior to June 1973 because I believed that the matter had been satisfactorily terminated and also because it became apparent to me that the initial misconception arose out of an inopportune conversation by Mr. Richard Whitney, my co-worker, and I saw no purpose in aggravating his embarrassment.

7. The information herein is based solely on my personal recollection of these events.


Joseph E. Casson

Subscribed and sworn to before me
this 23rd day of July 1973.


Notary Public
My commission expires: 4/30/78

District of Columbia

EXHIBIT NO. 104A

WILKINSON, CRAGUN & BARKER

LAW OFFICES

THE OCTAGON BUILDING

1735 NEW YORK AVENUE, N.W.

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STEPHEN R. BELL
THOMAS J. BACAS
FOSTER DERREITZ
ALAN I. RUBINSTEIN
JOHN M. FACCIOLA*
PHILIP A. NACKE
H. MICHAEL SEMLER
THOMAS E. WILSON

ERNEST L. WILKINSON
JOHN W. CRAGUN (1948-1969)
GLEN A. WILKINSON
ROBERT W. BARKER
CHARLES A. HOBBS
ANGELO A. IADAROLA
PAUL S. QUINN
LEON T. KNAUER
RICHARD A. BAENEN
JERRY C. STRAUS
HERBERT E. MARKS
PIERRE J. LAFORCE
FRANCES L. WORN
GORDON C. COFFMAN

* Not admitted in the
District of Columbia

August 3, 1973

HAND CARRIED

Honorable Howard H. Baker, Jr.
Vice Chairman, Senate Select Committee on
Presidential Election Campaign Activities
Room 3311
New Senate Office Building
Washington, D.C.

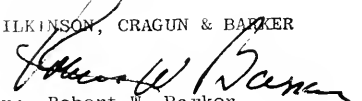
Dear Senator Baker:

In accordance with my telephone conversation with Don Sanders of the Committee staff, I forward herewith a copy of a letter addressed by this firm to Chairman Ervin on July 3, 1973, which we asked to be included as part of the official record of the hearing under S. Res. 60.

We are anxious that this letter be made part of the record, but we have had no acknowledgement and no indication whether such would be the case.

Sincerely yours,

WILKINSON, CRAGUN & BARKER


By: Robert W. Barker

Enclosure

cc: Sam Dash, Esquire (w/enclosure)
Fred Thompson, Esquire (w/enclosure)
Don Sanders, Esquire (w/enclosure)

2975

July 3, 1973

The Honorable Sam J. Ervin
Chairman, Senate Select Committee on
Presidential Election Campaign Activities
United States Senate
Room G-308, Senate Office Building
Washington, D. C.

Dear Mr. Chairman:

On behalf of the Honorable Maurice H. Stans I write this letter for the record of your proceedings to clarify certain impressions which may have erroneously been given to your Committee during the testimony of Mr. McCord.

Enclosed are pages 429 and 430 of Mr. McCord's testimony relating to intelligence material. At page 430, Mr. McCord indicates that this material was passed on to certain senior staff members, including Mr. Sloan, who passed it to Mr. Stans.

On behalf of Mr. Stans, I wish to advise you for the record that neither Mr. Stans, nor his secretary, have ever received any such intelligence reports. I have also checked through Mr. Sloan's lawyer, Mr. James Stoner, and learn that Mr. Sloan had never received such reports for Mr. Stans.

We would appreciate your including this letter as part of the record so this matter may be clarified.

Sincerely yours,

WILKINSON, CRAGUN & BARKER

By: Robert W. Barker

cc: Hon. Maurice H. Stans
James R. Stoner, Esq.

Enc.

Senator Weicker. Now, when you received this material, what did you do with it?

Mr. McCord. If it was of sufficient consequence, I would pass it along to Mr. Mitchell's office, usually through Mr. Odle. Quite often, I would put it in a memorandum for him for distribution to those other staff members of the Committee who would normally want to know of forthcoming demonstrations in the Washington area, some of which might affect the Committee.

Senator Weicker. Why did you feel this was -- now, you would pass this on to Mr. Mitchell at the Committee to Re-elect the President, is that correct?

Mr. McCord. Yes, sir, and other staff members.

Senator Weicker. Well, and other staff members. Who is "and other staff members"?

Mr. McCord. About six of the senior staff members, which included Mr. Sloan, who passed it to Mr. Stans, included Mr. Liddy, included Mr. Odle, included the prospective officers for Mr. Mitchell's wife, Mrs. Mitchell, and two or three other division chiefs there under Mr. Mitchell.

Senator Weicker. And this almost on a daily basis?

Mr. McCord. Yes, sir.

Senator Weicker. And this is material which you yourself received and you yourself distributed?

Mr. McCord. Yes, sir.

Senator Weicker. Well, Mr. Chairman, I have a lot of

other questions, but I am afraid I am going to have to digress that one for a few minutes and I would like to defer to you to have other questioning take place. I would hope that there will be an opportunity to proceed to further questioning on this.

The Chairman. I might state that Senator Inouye has to go at four o'clock and it might be advisable for us to recess at four and let the witness come back on Tuesday.

Senator Walcher. I beg Senator Montoya's pardon and thank ~~you~~ you, Senator.

Senator Montoya. Thank you, Mr. Chairman.

Mr. McCord, going back to the time that you were hired, I would like to ask you if you had a personal acquaintance with the President?

Mr. McCord. No, sir.

Senator Montoya. Had you worked with him in any capacity? Either while he was Vice President or before?

Mr. McCord. No, sir.

Senator Montoya. Had you done any work in his behalf while you were working for the CIA?

Mr. McCord. I was a staff member of the CIA while he was Vice President. He may have had access to material or reports which I wrote.

Senator Montoya. Did you ever speak to him during those same times?

S5911

PRACTICE BY EXECUTIVE BRANCH
OF EXAMINING INDIVIDUAL TAX
RETURNS

Mr. WILLIAMS of Delaware, Mr. President, I wish to discuss a matter which has been raised in the press and the Halls of Congress in the past few days, and on which there appears to have been a certain element of misunderstanding. I shall, to the best of my ability, review it from the beginning to show how the practice of examining tax returns by the executive branch has been conducted during the preceding administrations as well as the manner in which it is being conducted under this administration.

This statement is going to be made as nearly as possible without trying to project the argument into the political arena. I think such projections are most unfortunate on a question which is so vital to so many people. But now that it has been projected on a false basis before the public I think it should be clarified. That is the reason I ask the Senate to bear with me for just a short period of time, during which time I shall review the procedure followed by the executive branch during the present as well as the past two administrations.

This argument started on April 12, 1970, and I am going to read the press release as it was then given by Mr. O'Brien. The press release, dated Washington, D.C., April 11, 1970, reads:

O'BRIEN CHARGES VIOLATION OF FEDERAL LAW
BY NIXON ADMINISTRATION IN MOLLENHOFF
ACCESS TO INCOME TAX RETURNS

WASHINGTON, D.C., April 11, 1970.—Lawrence F. O'Brien, Chairman of the Democratic National Committee, today charged that the Nixon Administration's practice of turning over confidential federal income tax returns to a White House aide violates federal law and Treasury regulations governing the confidentiality of tax returns.

"Federal law and regulations protect the individual taxpayer's right to privacy and such indiscriminate access by a political operative in the White House is a clear violation of the legal rights of American citizens," O'Brien said.

"I call upon President Nixon to terminate immediately this illegal access of his per-

sonal staff to confidential tax returns of 80 million Americans," O'Brien said.

"If this action is not taken voluntarily," O'Brien added, "we are prepared to initiate legal action that will end this practice."

O'Brien's statement was based on a legal opinion signed by Mortimer M. Caplin and Sheldon S. Cohen, former commissioners of the Internal Revenue Service, and Mitchell Rogovin, former Assistant Attorney General for Tax Division and former Chief Counsel Internal Revenue Service.

The full text of the legal opinion submitted by Caplin, Cohen, and Rogovin to O'Brien is attached.

"I asked for this opinion upon learning of the Internal Revenue Service's practice of turning over confidential income tax returns to Clark Mollenhoff, special counsel to the President, on a 'need-to-know' basis," O'Brien said. "The views of these recognized tax experts leave little doubt as to the illegality of the procedures which now are being followed."

"It is particularly troublesome to learn of this practice when so many millions of Americans are at this moment poring over their individual income tax returns and are candidly disclosing personal information of the utmost sensitivity," O'Brien said.

"Only immediate action by President Nixon to stop these illegal procedures will restore the American people's confidence in the Internal Revenue Service, as well as demonstrate the willingness of the Nixon Administration to obey federal law and regulations in the conduct of its own affairs," O'Brien concluded.

I repeat one quotation of Lawrence O'Brien's release:

"I call upon President Nixon to terminate immediately this illegal access of his personal staff to confidential tax returns of 80 million Americans," O'Brien said.

"If this action is not taken voluntarily," O'Brien added, "we are prepared to initiate legal action that will end this practice."

O'Brien's statement was based on a legal opinion signed by Mortimer M. Caplin and Sheldon S. Cohen, former commissioners of the Internal Revenue Service, and Mitchell Rogovin, former Assistant Attorney General for Tax Division and former Chief Counsel, Internal Revenue Service.

I now read the letter which was attached to Mr. O'Brien's April 11 statement. The letter is dated April 9, 1970. It is addressed to Mr. Lawrence F. O'Brien, the chairman of the Democratic National Committee, 2600 Virginia Avenue NW., here in Washington:

APRIL 9, 1970.

Mr. LAWRENCE F. O'BRIEN,
Chairman, Democratic National Committee,
Washington, D.C.

DEAR Mr. O'BRIEN: It has been reported that an aide to the President currently has access to federal income tax returns upon his written request. You have asked for a legal opinion on whether this reported arrangement with the Internal Revenue Service comports with existing law and regulations. It is our legal opinion that such access is not in conformity with existing law and regulations relating to disclosures of tax returns.

Section 6103 of the Internal Revenue Code sets up the statutory procedures necessary to insure that tax returns and the confidential information appearing thereon are not made available to people who have no legitimate interest in the return. First enacted in 1910, this central provision of our present law provides that returns will be open for inspection "only upon order of the President and under rules and regulations prescribed by the Secretary or his delegate and approved by the President." The inviolate nature of tax information is fundamental to our tax system, not only in the name of privacy, but also to insure increased and more accurate taxpayer compliance. As to the latter, more accurate reporting on income tax returns appears to bear a close relationship to the degree of confidence in which the information is held by the Internal Revenue Service.

The regulations promulgated under section 6103 provides in detail, the manner and circumstances under which tax returns may be legally inspected by the public, state tax officials, Treasury officials, Executive Department officials, U.S. Attorneys and Department of Justice attorneys, Executive Branch agencies, and Congressional Committees. Specific requirements for inspection of federal income tax returns have been prescribed in the regulations to intentionally make it burdensome to secure inspection of such returns. This is in order to maintain the confidentiality of such returns except in unusual circumstances, melding the legitimate needs of government with the right to privacy of the individual. For example, with respect to inspection of returns by executive departments' officials other than the Treasury Department, the request must be in writing, it must be made by the head of the Agency requesting the opportunity to inspect the return, the request must relate to a matter officially before the Agency head, it must specify the taxpayer's name and address, the kind of tax reported, the taxable period covered, the reason why inspection is requested, and the name and official designation of the person by whom inspection is to be made.

The federal official in the news report is Special Counsel to the President and as such, he is an employee of the Executive Office of the President. Reg. Sec. 301.6103(a)-1(f) covers access to tax returns by such an employee.

Under this regulation, the President would be the only Executive Branch official with the authority to request the Commissioner to make tax returns available to employees of the Executive Office of the President. Such a Presidential request would presumably have to comply with the various requirements of the regulations detailed above.

It has been suggested that since the employee in question acts as agent for the President in matters of investigation, no written request by the President is required. We are unaware of any theory of law which would support such an argument. Indeed, this type of argument has been specifically rejected by the very language of the regulation.

S5912

The criminal sanction relating to the disclosure of confidential tax information is found in section 7213 of the Code. It makes it a misdemeanor for any federal employee to divulge tax information except as provided by law.

If tax returns are made available in a manner not in conformity with section 6103 of the Code and the regulations, it would appear that such divulgence of tax information is not as provided by law.

A copy of section 6103 and the pertinent regulations are attached for your convenience.

Sincerely,

MORTIMER M. CAPLIN.
 SHELDON S. COHEN.
 MITCHELL ROGOVIN.

As I mentioned earlier, Mr. Caplin was the Commissioner of Internal Revenue under the Kennedy administration; Mr. Cohen was the Commissioner of Internal Revenue under the Johnson administration; and Mr. Rogovin was an employee, first in Treasury and then in Justice, under both administrations.

When this dramatic statement was made by Mr. O'Brien there was understandably a lot of concern expressed by members of the press, by Members of Congress, and by millions, I daresay, of American citizens as to what was happening here in Washington and whether the Internal Revenue Service was being turned into a Gestapo, as the allegation of the chairman of the Democratic National Committee would indicate.

The chairman of the Joint Committee on Taxation, the Senator from Louisiana (Mr. LONG), called the Joint Committee on Taxation together to explore these charges, and we asked Commissioner Thrower to appear before our committee.

This meeting was at 3 o'clock on Tuesday of this week. Having read this statement I felt we should go beyond and see what the precedents were. So I directed this wire early on Monday morning, April 13, to the Honorable Ralph W. Thrower, the Commissioner of Internal Revenue, Department of the Treasury, in Washington:

In connection with your meeting tomorrow with the Joint Committee will you please have available information regarding the number of times tax returns were requested by the Executive Branch during each of the administrations since 1960. Signed, John J. Williams, Senator from Delaware.

Later I supplemented that and asked that he furnish the various regulations or rules which were discussed in the committee.

Commissioner Thrower has furnished and I received these yesterday—a series of the regulations which have governed the executive branch on the handling of these tax returns over the years beginning with the Kennedy administration.

I might say first, however, before going to that that I asked the staff of the joint committee, under the direction of Larry Woodworth, with whom all of us are acquainted, to prepare a memorandum as to the various branches of Government to whom tax returns are available and the manners in which the returns could be examined. I shall read his memorandum first. This is entitled, "Provisions of the Statute and Regulations Relative to Publicity of Income Tax Returns":

STATUTORY PROVISIONS ON PUBLICITY

The Code provides (section 6103(a)) that generally income tax returns are to be open to inspection only upon order of the President under rules and regulations prescribed by the Secretary of the Treasury or his delegate and approved by the President.

Four exceptions are made to the above limitation as to the publicity of returns. Income tax returns may be made available to:

(1) State income tax officials for the purpose of administering the State income tax law or to obtain information to be furnished local taxing authorities. The inspection may be made only upon request of the governor and only for State tax administration or, upon his request, can be made available to local tax administrators.

(2) In the case of corporate income tax returns, to shareholders having an interest of 1 percent or more.

(3) The Committee on Ways and Means, the Senate Finance Committee, the Joint

Committee on Internal Revenue Taxation, and any select committee authorized to investigate tax returns, and

(4) The persons who filed the returns.

He then lists the various regulations regarding disclosure, and I ask unanimous consent that all of these regulations be printed in the RECORD at this point.

There being no objection, the regulations were ordered to be printed in the RECORD, as follows:

REGULATIONS

The existing regulations (Reg. § 301.6103 (a)-1(f)) contain a general authority regarding inspection of returns by the executive departments. They specify that if the head of an executive department (other than the Treasury) or any other establishment of the Federal Government desires to inspect, or have an employee of his inspect, an income tax return he may do so if:

(1) it is in connection with some matter officially before him;

(2) there is a written application signed by the head of the executive department or other Government establishment desiring the inspection; and

(3) the application states the name of the person for whom the return was made, the kind of tax, the year, the reason why the inspection is desired, and the name and official designation of the person by whom the inspection is to be made.

PENALTIES

If the provisions of the regulations referred to above are not fully complied with, Section 7213 of the Internal Revenue Code relating to unauthorized disclosure of information applies. This provides for a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both, for improper release of information on tax returns. Also, if the offender is an officer or employee of the United States Government the section provides that he is to be dismissed from office or discharged from employment.

Mr. WILLIAMS of Delaware. As I stated, I had asked the Commissioner to go back and outline from the beginning just how this problem had been administered throughout the years by the various Presidents.

The first official record was a memorandum dated May 23, 1961, addressed to the Honorable Robert H. Knight, the General Counsel of the Treasury, and the subject is "Inspection of Returns by Congressional Committees." This memorandum is signed by Mortimer Caplin, the Commissioner of Internal Revenue

under the Kennedy administration and one of the men who signed the memorandum which I read earlier and upon which Mr. O'Brien based his statement of April 11.

I shall put the entire memorandum into the RECORD, but I shall move over to page 3 of it first. The first part of it relates to the manner in which congressional committees can obtain access to tax returns; but on page 3, under item c, Mr. Caplin outlined the rules under which a representative of the Kennedy administration could examine tax returns.

At this time I am quoting Mr. Caplin, who was then the Commissioner of Internal Revenue:

C. INSPECTION OF RETURNS AND FILES BY MR. CARMINE BELLINO

On January 26 Mr. Bellino, Special Consultant to the President, called at my office and requested permission to inspect our files on ——— and others. Although we had no precedent to guide us, we decided that Mr. Bellino, in his capacity as a representative of the President, could inspect our files without a written request.

I underscore that point—"without a written request."

This reflects the view that Section 6103 of the Code specifically provides that returns shall be open to inspection upon order of the President, and since Mr. Bellino's official capacity constitutes him the representative of the President, the action taken is regarded as conforming to law. Based on this decision, we permitted Mr. Bellino to inspect the files relating to ———. Since that time we have also permitted him to inspect tax returns and related documents pertaining to other persons.

Mr. CURTIS. Mr. President, will the Senator yield for a question?

Mr. WILLIAMS of Delaware. I yield.

Mr. CURTIS. Whom is the Senator quoting?

Mr. WILLIAMS of Delaware. I am quoting Mortimer Caplin, the Commissioner of Internal Revenue under the Kennedy administration and the same man who signed the letter to Larry O'Brien saying that it was a violation of the law for anybody in the executive branch to examine these returns except by written request.

It is fantastic how some of these bureaucrats can change positions after they leave office.

Yes, I am quoting from Mr. Caplin's own regulation which was issued under date of May 23, 1961. I would point out again the significant part of it, that on January 26 Mr. Bellino, as President Kennedy's special consultant, was given permission to examine any tax return without any written request.

This was 6 days after the administration took office and this ruling that they did not have to have any written request was made by Commissioner Caplin.

Mr. CURTIS. How many returns did he let Mr. Bellino see?

Mr. WILLIAMS of Delaware. No one knows. I asked for the number of tax returns which were requested by each administration. I was advised that there were seven requests under the Nixon administration signed by Mr. Mollenhoff involving nine tax returns. I will later outline the procedure followed by the Nixon administration, but they were all with a written request.

S 5913

The Commissioner was asked how many returns had been inspected by the previous administration so that we could get a comparison, and they said that since there were no written requests apparently no records were kept or—if there were they cannot be found—they were unable to answer. However, the Commissioner did say that their records show that Mr. Bellino was in the Treasury Department examining the tax returns of various individuals and the language he used was "days on end." There must have been a very large number involved.

I will continue quoting from Mr. Caplin's May 23, 1961, ruling relating to this subject:

Further, in a letter dated January 26, and received January 30, Attorney General Robert F. Kennedy asked that Mr. Bellino be permitted to review all files, records, and documents requested by him in order to coordinate the investigation of certain individuals being conducted by the Internal Revenue Service, the Justice Department and other Government agencies. Permission was granted for Mr. Bellino to inspect such files in a letter dated February 1, 1961.

Additionally, Senator John L. McClellan, in a letter dated March 24, designated Mr. Bellino as a staff member of the Senate Permanent Subcommittee on Investigations, a subcommittee of the Committee on Govern-

ment Operations, authorized to inspect returns pursuant to Executive Order 10916. As such, he is authorized to inspect those documents made available to the Subcommittee under requests made pursuant to this Order.

In the interest of providing a more detailed statement there is attached a Technical Memorandum prepared in the office of the Chief Counsel, which sets forth the historical background of (1) the requirement of a committee resolution, and (2) the executive policy against supplying photocopies of returns to Congressional Committees. If you should desire additional information please let me know.

Signed, "Mortimer Caplin, Commissioner of Internal Revenue."

I move now to the next letter we have, showing how the Nixon administration handled it. I do not find any correspondence or ruling under the Johnson administration thus far which changed this practice. However, I find that when the Nixon administration took over, this loose practice of the Kennedy administration wherein tax returns were examined by White House staff was corrected. What procedure does this administration follow?

Mr. Thrower stated that when he assumed office in 1969 he was advised by the White House that Mr. Mollenhoff would be assigned to a position comparable to that which Mr. Bellino held under the Kennedy administration, and Commissioner Thrower felt that in the interest of orderly procedure the manner of allowing anyone from the executive branch to examine a tax return of any individual without having a written request or having it in writing for future reference was wrong. The Commissioner conferred with the White House, and this is a memorandum of procedure they worked out under date of September 18, 1969.

This is the memorandum addressed to the Honorable Clark R. Mollenhoff, Deputy Counsel to the President, signed the Commissioner of Internal Revenue, and the subject is inspection of tax returns and related files. These are the rules agreed upon at that time:

SEPTEMBER 18, 1969.

Memorandum to: The Honorable Clark R. Mollenhoff, Deputy Counsel to the President.

From: Commissioner of Internal Revenue.
Subject: Inspection of Tax Returns and Related Files.

Following through on our recent luncheon conversation, I have been thinking about ways that we can meet those situations in which you may want to inspect tax returns or other Internal Revenue Service files while at the same time carrying out our responsibilities under the disclosure statutes.

As you know, the basic rules governing disclosure of tax return information are set forth in 26 U.S.C. 6103 et seq., and the penalty provisions themselves are in 26 U.S.C. 7213 and 18 U.S. 1905.

I would suggest that every time you have occasion to inspect a tax return, application for exemption, or other Internal Revenue file, you send me a memorandum briefly setting forth the nature of the request. Naturally, we will infer in every case that the request is either at the direction of, or in the interest of, the President. I have taken the liberty of drafting a suggested format that you may wish to consider. If you want to look at the returns or files of more than one person or organization, you may list all of them in one memorandum.

After receiving your request, we will make arrangements for the files to be assembled in my immediate suite of offices here and we will notify you as soon as they are ready for inspection. Since most of the material in which you will be interested will be located in one of our regional or district offices, it will be necessary for us to obtain it and bring it to Washington. If, after inspection of the files, you want copies of any of the material inspected, we will be happy to make them for you.

I trust this arrangement will be satisfactory and look forward to a mutually rewarding relationship between our respective offices.

Signed, "Randolph W. Thrower."

Mr. GORE. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. GORE. The able Senator has referred to the conference with Commissioner Thrower and has now read a memorandum which was denied to the Joint Committee on Internal Revenue. I trust that it will be in order to make a few remarks about it.

Mr. WILLIAMS of Delaware. If the Senator will yield for a moment, the Senator is in error. This memorandum was not denied to the joint committee. They have this information, and the Senator is a member of that committee. It was also sent to me because I was the one who originally requested it. But I specifically requested that the full report be sent to the joint committee, and it was delivered to them first. They acknowledged receipt of it. The Senator is a

member of the committee, and it is available; but I have a copy of it if he wishes to see it.

Mr. GORE. I appreciate the correction.

I requested this memorandum, and Mr. Thrower said he would have to obtain permission from the President to supply it.

I had not been advised that it had been supplied to the committee. I am glad that it has. I congratulate both the President and Commissioner Thrower upon supplying it.

Now, would the Senator from Delaware yield further?

Mr. WILLIAMS of Delaware. I yield.

Mr. GORE. To begin with, I am not acquainted with the details of what happened in previous administrations. It is only recently that I became a member of the Joint Committee on Internal Revenue. I am aware of what has happened here. Commissioner Thrower is a fine man and I do not wish in any way to be unkind to him.

However, in fairness to the Senate, I must state that I question the propriety and discretion, or lack thereof, of his action in supplying and in agreeing to supply Mr. Mollenhoff in an open ended arrangement with tax returns and copies of tax returns without a direct communication from the President of the United States, either verbally or in writing.

Commissioner Thrower testified that he had neither from the President. He relied entirely upon the representations of Mr. Clark Mollenhoff whose veracity I do not question.

Mr. WILLIAMS of Delaware. The point I want to get into the record straight is that Commissioner Thrower did not say—

Mr. GORE. I beg the Senator's pardon?

Mr. WILLIAMS of Delaware. I want to get the record straight. Again the Senator from Tennessee is in error. Commissioner Thrower said he did not rely entirely upon the statement of Mr. Mollenhoff. He said he was told by an official representative of the President that Clark Mollenhoff was being designated for this position and that the arrangement was to be made with Mr. Mollenhoff to work out procedures. He did not identify the other individual.

I doubt if all of those men are in direct communication with the President any more than they were under preceding administrations.

I thought we should keep the record clear. I do not think there is any question in the minds of anyone but that Mr. Mollenhoff is the deputy counsel to the President, and he did hold the same official position that was held by individuals in preceding administrations who had access to the tax returns. We should give Commissioner Thrower the credit—I also give credit to the Nixon administration—for recognizing the danger in the loose manner in which it had been handled heretofore under the Democratic administrations where they were freely examined by White House employees without any written requests. Commissioner Thrower arranged that Mr. Mollenhoff would sign on the line the name of the taxpayer and at the same time be ready to justify why they needed that return. And I think they should. I am amazed that Commissioner Caplin had handled this same situation so loosely. If there is abuse I will join the Senator or anyone else in cleaning up abuses; but

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let us remember that the law provides that the President can get these returns, and the law provides, and it is intended to provide, that the Ways and Means Committee, the Finance Committee, and the Joint Committee on Taxation, operating independently of each other, any one of them can request and get a tax return. These committees have gotten them over the years with or without the consent of the President and even over the objections of the Commissioner when they needed to.

That is the law and has been over the years, and every President and every authorized committee has utilized this authority.

Surely the Senator from Tennessee, who is an able lawyer, was aware of that fact, and I cannot imagine just what Mr. Caplin was thinking about when last week he signed a letter denouncing his own decisions made as a Commissioner of Internal Revenue as having been illegal.

The President and the congressional committees must have this authority,

but at the same time we must see that it is not abused.

I emphasize that we must have this authority. For example, I go back to my experience in the exposure of corruption in the Internal Revenue Service in the 1950 period. This corruption was at a high level. The then Senator from Virginia Mr. Harry Byrd, and the Senator from North Carolina Mr. Hoey, and myself, were appointed by Senator George of Georgia as a subcommittee to examine the allegation that certain high officials in the Revenue Service had abused their public offices. We needed certain tax returns to proceed with this investigation.

We had a situation where the former Commissioner of Internal Revenue went to the penitentiary. A Deputy Commissioner of Internal Revenue serving at the time was indicted. A chief counsel of the Alcohol Tax Unit was also subsequently indicted.

Therefore, we could not expect cooperation from the executive branch or from the Internal Revenue. Our committee had to have that authority. I want to review this because this is very important background as to why we have to have this authority. The question may be asked, why did we not go to the Department of Justice? I did go to the Department of Justice during that period and tried to get their cooperation. I did not get it. Later I found out why.

One of the chief counsels, an Assistant Attorney General acting in the Tax Division of the Department of Justice, was likewise involved in this conspiracy and later went to jail.

Then one might ask, why did we not go to the President? I was unable to get a conference with President Truman. I tried hard at that time to do so. I wanted to report these allegations to the executive branch and get their assistance at the time I could not understand, why I was unable to get an appointment with President Truman.

I resented that very much at the time, although I understood later why I did not get that appointment.

I want to say here, first, lest there be any misunderstanding, that during all that investigation—and there was a lot of corruption exposed—never was there one single instance where one could point a finger at Harry Truman or any member of his family as having done

anything dishonest. I want to emphasize that. But at the same time, there was a lot of corruption in his administration which needed cleaning up.

I found out later why I could not get an appointment with President Truman. The man I had to go through to get the appointment was Mr. Matt Connelly, the White House staff man, and President Truman's representative. I told him I wanted to talk about the alleged corrupt situation in the St. Louis revenue office and the Washington office. Later, Mr. Connelly himself was indicted.

Thus we had the situation where the Department of Justice, the Internal Revenue, and the White House aide were all involved in a conspiracy to fix tax cases.

In a situation such as that, the only other recourse, in order to protect the taxpayers, was that at least we had someone or some committee in Congress which would act. The Finance Committee, with the assistance of the Senator from Virginia, Mr. Harry Byrd, as well as Senator Hoey from North Carolina, took an active interest in this matter, so that in spite of—I emphasize in spite of—getting no cooperation from the executive branch we were able to expose that corrupt regime. We were not getting much cooperation from the Treasury in the various 64 district offices, the reason being 12 of them were indicted, and eight of them went to the penitentiary at that time. Altogether, there were 100 some odd revenue employees who went to the penitentiary during that era.

Fortunately, we had the situation where the congressional committees could function. We did have access to these returns, with or without the permission of the executive branch.

Now I want to make a hypothetical reversal of that situation. Hypothetical and on the assumption that it will never happen. But it could happen.

For example, there are three congressional committees which can get tax returns without any consent from the Treasury Department. We can get them. The Senator knows that both the Finance Committee, of which he is a member, and the joint committee, of which he is also a member, can get the returns no matter what the President says and no matter what the Commissioner of Internal Revenue says because the law says that we can get them.

Suppose the time ever came—and God forbid that it would come—when we would have the top echelon of the Finance Committee and the top echelon of the Ways and Means Committee, which comprise the joint committee, all of them went crooked at one time. Then, without the President's authority where would there be the check to protect the American taxpayers?

I want to say that this is not any suggestion as to what can or will happen. I do not think it will happen. But I would not have thought it would happen simultaneously before where we would find the Bureau of Internal Revenue here in Washington, the top echelons of the Department of Justice, and someone connected with the White House, all engaged in this same type of conspiracy.

But suppose it did? Then the law provides that there is a check wherein the President of the United States could move in, and he would take action to protect the American people.

These safeguards were included as checks. At the same time I fully realize and I support the fear of Senators that there could be abuse in this matter. Certainly there can be abuse. I recognize that. I recognize the danger.

But if any man can show me where this privilege has been abused, I do not care whether it is in the executive branch or the legislative branch, I will lead the fight against it. But let us not defeat the practice here on a lot of political innuendoes and assumptions.

What I am pointing out is that over the years it has been historical that the President could under the law have access to tax returns, and that covers the agent he designates. We know that the President of the United States—Jack Kennedy, Lyndon Johnson, or Richard Nixon—are not personally going to examine the returns. He delegates that authority.

The senior Senator from Tennessee delegates responsibility in his office. He has to. The Senator from Tennessee is a member of the Joint Committee on Taxation. Our joint committee has the authority to obtain tax returns. We do get tax returns. We have had access to several tax returns in the last 12 months, and we have delegated our chief of staff, Larry Woodworth, and his assistants to examine them.

I do not think that I have seen one. I do not think the Senator from Ten-

nessee has seen one. We have delegated authority to our staff and we did not do it in writing.

But that does not mean there has been abuse.

Mr. GORE. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. GORE. Mr. President, I thank the Senator for his generous references. As the Senator knows, the Senator from Delaware and I vote together frequently on matters of tax preference. On matters like this we nearly always vote together.

When the committee met with respect to that matter, it was on the motion of the senior Senator from Delaware, seconded by the senior Senator from Tennessee, that the President supply to the committee a copy of the memorandum with respect to individual returns which Mr. Mollenhoff requested and also a request to the President to inform the committee whose tax returns had been supplied to Mr. Mollenhoff and why.

I will state this to make it perfectly plain, that this is no contention between the senior Senator from Delaware and the senior Senator from Tennessee. As I said earlier, I am not referring to the procedure of previous administrations.

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Mr. WILLIAMS of Delaware. Mr. President, if the Senator will yield, I understand that we cannot be in the Chamber all the time. I do not think he was here when I read the memorandum signed by Mortimer Caplin, Commissioner of Internal Revenue.

The memorandum is dated May 23, 1961. It describes the procedures under which he operated. I would like to read that again if I may.

Mr. GORE. I think I heard some of it.

Mr. WILLIAMS of Delaware. I want the Senator to hear all of it. That is what we are talking about, but first let me again correct the Senator from Tennessee. It was his motion that the committee ask for the names of the tax returns examined by Mr. Mollenhoff. My motion broadened this request to cover the names of all taxpayers whose returns were examined by all the administrations since 1960.

It was Mr. Caplin, the Commissioner of Internal Revenue under the Kennedy

administration, who raised this question as to the procedure that the Nixon administration was following, and I pointed out that this administration is insisting upon signed letters before any returns are made available.

Now let us see how Mr. Caplin handled this when he was in office.

I again quote from Mr. Caplin's May 26, 1961, regulation:

C. INSPECTION OF RETURNS AND FILES BY MR. CARMINE BELLINO

On January 26 Mr. Bellino, Special Consultant to the President, called at my office and requested permission to inspect our files on ——— and others. Although we had no precedent to guide us, we decided that Mr. Bellino, in his capacity as a representative of the President, could inspect our files without a written request.

I emphasize that. There was no written request for these tax returns by Mr. Bellino or the President or anyone else, who was working at the White House at that time.

Commissioner Thrower said he could not tell us how many returns were examined by the Kennedy representative but that they did spend days and days examining them.

I read further from the Caplin 1961 regulation:

This reflects the view that Section 6103 of the Code specifically provides that returns shall be open to inspection upon order of the President, and since Mr. Bellino's official capacity constitutes him the representative of the President, the action taken is regarded as conforming to law. Based on this decision, we permitted Mr. Bellino to inspect the files relating to ———. Since that time we have also permitted him to inspect tax returns and related documents pertaining to other persons.

Mr. Caplin must have had his tongue in his cheek when he signed the O'Brien letter last week charging anyone who had allowed a White House representative to examine a tax return without a written request to be in violation of the criminal code.

Mr. President, I ask unanimous consent that the entire ruling of Mr. Caplin under date of May 23, 1961, be printed at this point in the RECORD.

There being no objection the memorandum was ordered to be printed in the RECORD, as follows:

MEMORANDUM FOR THE HONORABLE ROBERT H. KNIGHT, GENERAL COUNSEL OF THE TREASURY

SUBJECT: INSPECTION OF RETURNS BY CONGRESSIONAL COMMITTEES

In the Treasury staff meeting on March 31st it was pointed out that Mr. Carmine Bellino, Special Consultant to the President, had objected to certain regulations and Service policies affecting Congressional Committees authorized to inspect returns by Executive Orders. Specifically, he objected to (A) the regulations requiring the adoption of a resolution by a full Congressional Committee before its representatives may obtain permission to inspect tax returns and (B) the policy against allowing Congressional Committees to obtain photocopies of returns. It was suggested that we would submit our views concerning possible changes in present rules and procedures respecting these matters.

A. Requirement of a resolution by a full congressional committee

The requirement for a resolution adopted by the committee is contained in Treasury Decisions 6132 and 6133. The decision to require a full committee resolution for the inspection of returns was made by officials of the Treasury Department and approved by the President. Prior to the issuance of these Treasury Decisions in May 1955, a Congressional Committee authorized by Executive Order to inspect returns was permitted to do so solely upon the written request of the chairman of the committee or of a subcommittee thereof. No resolution of the committee was then required.

Mr. Bellino objected to the "committee resolution" requirement of the regulations because the task of assembling a quorum of a full committee for this purpose is very inconvenient, particularly where the membership is large. He stated that this is a burdensome requirement. For example, in April 1960, the Special Committee on the Federal Aid Highway Program, a Subcommittee of the House Committee on Public Works, requested permission to inspect certain returns. That request was denied because a resolution had not been passed by the full committee, consisting of thirty-two members, as required under the regulations.

Relief from the situation described may be provided by amendment of the regulations to permit, in the alternative, acceptance of a resolution adopted by a subcommittee, and signed by its chairman. This alternative should eliminate the problem but would retain a system of control needed by the Service.

B. The policy against allowing congressional committees to photocopy or obtain photocopies of returns

Under our present policy representatives of Congressional Committees are not supplied or permitted to make facsimile or

photocopies of returns or related documents. However, they are permitted to inspect returns and certain related documents on premises of the National Office or a field office of the Service. Blank returns and other forms are furnished for transcribing data contained in the file opened for inspection. Access is granted not only to returns but also to administrative files, including revenue agent and special agent reports, with the exception of certain confidential documents.

This policy has been approved in the past by President Eisenhower, Secretary Humphrey, and Commissioners Andrews, Harrington, and Latham. The reasons for the policy apparently include the following:

1. It is essential to maintain the confidential nature of tax returns except insofar as the inspection of such returns is required in the public interest. Our tax collecting process depends upon the voluntary response of millions of taxpayers and they are entitled to rely on the statutory protection which safeguards the confidential nature of the information they furnish the Service. The use of photocopies exposes such confidential information to a greater extent than present methods of inspection. Improper or indiscreet disclosures could reduce public confidence in the Service and have adverse effects on the collection of revenue. While the use of photocopies might be advantageous to a committee, it would not appear to be essential to the discharge of the committee's functions.

2. The possible disclosure of tax returns or related data at committee sessions held as public hearings, and the accompanying risk of disclosures to unauthorized persons, including the press, have been matters of continuing concern to the Service.

3. When a Congressional Committee expires, its files may not be destroyed and the possibility of unauthorized disclosure may be increased.

However, our practice of not furnishing photocopies of returns to these committees is difficult to defend for the following reasons:

1. Section 6103(a) (3) of the Code provides that whenever a return is open to inspection a certified copy shall be furnished upon request.

2. Section 301.6103(a)-2 (T.D. 6546) of the related Regulations on Procedure and Administration provides that a copy of a return may be furnished any person who is entitled to inspect such return, upon request.

3. Our present policy provides distinctive treatment to such Congressional Committee requests since taxpayers, States, and Agencies of the Executive branch of the Federal Government may be furnished copies of returns upon receipt of a proper application.

Notwithstanding the above, we would like to retain the present policy since it provides, a degree of protection against improper and indiscreet disclosures. However, if it is determined that this policy should be liberalized, we shall, of course, be guided accordingly. No amendment of regulations would be required to affect a change.

C. Inspection of returns and files by Mr. Carmine Bellino

On January 26 Mr. Bellino, Special Consultant to the President, called at my office and requested permission to inspect our files on — and others. Although we had no precedent to guide up, we decided that Mr. Bellino, in his capacity as a representative of the President, could inspect our files without a written request. This reflects the view that Section 6103 of the Code specifically provides that returns shall be open to inspection upon order of the President, and since Mr. Bellino's official capacity constitutes him the representative of the President, the action taken is regarded as conforming to law. Based on this decision, we permitted Mr. Bellino to inspect the files relating to —. Since that time we have also permitted him to inspect tax returns and related documents pertaining to other persons.

Further, in a letter dated January 26, and received January 30, Attorney General Robert F. Kennedy asked that Mr. Bellino be permitted to review all files, records, and documents requested by him in order to coordinate the investigation of certain individuals being conducted by the Internal Revenue Service, the Justice Department and other Government agencies. Permission was granted for Mr. Bellino to inspect such files in a letter dated February 1, 1961.

Additionally, Senator John L. McClellan, in a letter dated March 24, designated Mr. Bellino as a staff member of the Senate Permanent Subcommittee on Investigations,

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a subcommittee of the Committee on Government Operations, authorized to inspect returns pursuant to Executive Order 10916. As such, he is authorized to inspect those documents made available to the Subcommittee under requests made pursuant to this Order.

In the interest of providing a more detailed statement there is attached a Technical Memorandum prepared in the office of the Chief Counsel, which sets forth the historical background of (1) the requirement of a committee resolution, and (2) the executive policy against supplying photocopies of returns to Congressional Committees. If you should desire additional information please let me know.

MORTIMER CAPLAN,
Commissioner.

Mr. GORE. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I will in a minute. I am reviewing this record for the benefit of the Senator from Tennessee and not to point the finger at the Kennedy administration. I am not raising any question of impropriety with respect to the man who was in the White House. I do not think that anyone has raised a question that Mr. Mollenhoff has acted improperly with respect to handling these tax returns except by implication.

If any Senator knows of impropriety in this matter let us put our foot on it quick.

If there are any charges of improper use of these returns by Mr. Mollenhoff speak out, do not just cast doubts by these wife-beating questions as to what could happen.

Mr. GORE. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. GORE. Neither two wrongs nor a multiplicity of wrongs constitute a right.

I do not wish to allege any illegal act. I have not researched this law to that extent. But I say to the Senator in all seriousness that I think it is indiscreet, injudicious, and unwise, and I will go so far as to say improper for the Commissioner of Internal Revenue to make an open-ended arrangement with a political operative without direct orders or instructions from the President himself.

It throws uneasiness into the minds of millions of Americans concerning the confidential nature of the tax returns.

If nothing else comes from this, regardless of what may have occurred in past or present administrations, I will join with the senior Senator from Delaware in trying to formalize protection to preserve the privacy of the American citizen in his tax return.

This is not to question the right of a congressional committee with a need to know, with a need to have access to tax returns.

The Senator from Delaware wondered if I had ever seen one. I do not think I have seen but one tax return in the 12 years I have been on the Finance Committee. And this was requested by the committee emblematic of a question on legislation, not with respect to the wrongdoing of a taxpayer.

I think it ought to be formalized. I repeat, for a Commissioner of Internal Revenue to make an open-ended arrangement for an agent, whoever he may be, whatever his name is, whatever his role is, without an instruction from the head of the agency is of questionable legality.

I do not say it is illegal.

I had thought it was, but I am not prepared to say positively that it is. I have an adviser on my staff who says that it is. But I am not prepared to say so in view of what the Senator says.

Mr. WILLIAMS of Delaware. The Mollenhoff arrangement is not open ended. The Senator's criticism can more properly be directed toward the procedure under his own administration. Let us be fair with our criticism.

Mr. GORE. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. In just a moment. The only open ended arrangement that I know of around here in the matter of tax returns involves the committee of which he and I are members. We voted open ended authority to our staff. The Joint Committee staff can examine the returns. That is open ended authority. We do not put it in writing. Perhaps the Senator and I should look at our inner selves and see if we are operating properly.

Mr. GORE. Mr. President, I agree.

Mr. WILLIAMS of Delaware. I think we should face the facts.

The suggestion was made in Mr. O'Brien's statement that there was an indiscriminate examination of tax returns under the Nixon administration.

That is not true. The President has said that no such use has been made. I would certainly hope that this would be the basis of the examination of tax returns in all administrations; namely, in situations where questions are raised as to the propriety of conduct of some public official or someone in the administration.

Certainly, if he considers appointing a member to the courts he can, or at least he should, get that person's tax returns and have them examined before he sends the nomination to the Senate for confirmation. If, on the other hand, an allegation comes in that Joe Doaks, who is already a member of the executive branch or maybe even on the White

House staff, is doing something improper the President should examine it, and if it is true, take the appropriate steps. If he needs the man's tax returns to get this information he should have the authority.

The Senator is well aware of the fact that the Commissioner said he knew of no instance where this authority has been abused. I am going to cite one case to point out why I think this authority is important.

Mr. GRIFFIN. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. WILLIAMS of Delaware. Mr. President, I am going to cite one case to point out why I think this authority is important. I am not going to reveal the name; however, this is not a hypothetical case. In this instance the allegation was received from some fellow who had been before the courts, and he had received what he thought was an exceptionally heavy sentence. He was angry and his complaint was, "Why should this judge be so rough on me as a delinquent taxpayer"—not that he was innocent—"when he is more guilty than I am." Certainly that situation needs investigation. It was referred to proper channels at the White House. What did they find? They found that for 8 out of the 9 years prior to the time this man was appointed to the Federal bench he had not filed or paid his Federal income taxes. I repeat that. For 8 to 9 years prior to the time he was appointed as a judge and confirmed by the Senate he had not paid his Federal income taxes or filed any return. Just before being confirmed, apparently thinking he was going to get the appointment, he filed belated returns for all those years; and in a matter of months he was nominated and confirmed, and he is serving today.

The only way the President can now get rid of him would be to ask him for his resignation unless we in the Senate say that we will back him in removing this particular judge. I am sure the President will furnish the name of the man if the Senate wishes to act. Why should he not investigate such a charge?

If there are abuses of public trust that is what we are talking about. Certainly, allegations which oftentimes cannot be supported do come in with respect to John

Doe. When I was working with the Senator from Virginia allegations came in with respect to many Joe Does. We would get his tax returns and we would find nothing to substantiate those allegations. This is a very delicate matter and must be handled with discretion.

The very suggestion that the tax return of Joe Doe has been requested by a congressional committee or by the executive branch in itself constitutes a damaging indictment against the individual. It is unfair to publish these names unless guilt is established.

The Senator knows that he and I and every other member of the Joint Committee were assured by Commissioner Thrower that no request had been received from this administration since he has been in office involving an elected official, nor any on the basis that they were going to be examined to determine if John Doaks had paid the proper income tax. The amount of taxes to be paid is the job for the Commissioner of Internal Revenue and not the job of a congressional committee or the White House.

Mr. President, as a Senator I often have had people write to me that Joe Doaks is not paying his income tax. I have one standard form letter which states: If you have any information in that regard, you should write directly to the Director of Internal Revenue in your area or to the Commissioner and send him that information. To handle these otherwise would be wrong. I have directed my attention toward procedures.

I would be the first to rise in this Chamber and criticize the executive branch or any representative of it if they indiscriminately started to get tax returns of the average taxpayer. That same statement applies to congressional committees. That is the job of the Commissioner of Internal Revenue. If it is ever

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departed from under this administration, either at the congressional or at the legislative level or if it is shown to have been departed from by other administrations I shall be the first to rise in this Chamber.

But they have a responsibility when these allegations involve propriety to take some action. Why should they not look at them and find out if this charge

against some official of Government is true? I would not want a judge on the Federal bench who might be judging me when he has not paid his income taxes for 8 or 9 years.

Mr. GORE. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I shall yield to the Senator in a moment.

If this screening process had been in practice at that time the nomination of that judge would not have been sent to the Senate for confirmation.

Of just what are Senators afraid?

There seems to be general agreement that no instances of impropriety of the handling of this authority has as yet been cited, yet there seems to be a fear.

Mr. GRIFFIN. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. GRIFFIN. Is the junior Senator from Michigan correct that under existing law and the law that has been in effect the Governors of the several States which have income tax laws have the right to inspect Federal tax returns?

Mr. WILLIAMS of Delaware. The Governors, or they can delegate the authority.

Mr. GRIFFIN. That is my next question. Does it have to be the Governor or can he designate?

Mr. WILLIAMS of Delaware. He can and he does designate someone in his behalf in practically all situations. Some States that do not have income taxes may not use the authority. I understand 42 or 43 States do designate.

Mr. GRIFFIN. Would it not be a peculiar situation if the Governors of all States can designate someone to examine Federal tax returns when they have a question, and a question is raised about the President of the United States having designated a representative to do the same thing?

Mr. WILLIAMS of Delaware. Not only that, but it would be ridiculous to say the Governor has to do it personally or that the President has to do it personally. Certainly that is ridiculous.

I commend the Nixon administration for having laid down these sounder rules. Maybe they need to be tightened up more. Maybe Congress needs to examine our own procedures.

The Senator from Tennessee referred to the fact that the White House is a

political organization. Congress is a political organization. I respect that fact. There is nothing wrong with that. The White House is part of the political arm of Government, but by the same token we in Congress on occasion have been known to be somewhat political. Who is to say a congressional committee is any less honorable or any less political than the man in the White House?

As I emphasized earlier, I am not questioning the manner in which the Kennedy administration operated, even though they had no written request; but at the same time let us not put a halo around Mortimer Caplin's head on the basis that his suggestions apply to everybody else but him. His later position is just a little bit ridiculous. I shall be looking forward to his comment on his own regulations of 1961.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I shall yield in a moment.

But if Mr. Caplin really thinks that he was in violation of the law to allow examination of these tax returns in 1961 without written orders and really wants to go to the Department of Justice to plead guilty maybe they would render assistance. I am reminding him of his own regulations in a friendly spirit.

Mr. HOLLAND and Mr. BAKER addressed the Chair.

Mr. WILLIAMS of Delaware. I yield to the Senator from Florida.

Mr. HOLLAND. Mr. President, perhaps I can throw a little light on the question raised by the Senator from Michigan.

At the time I served as Governor of the State of Florida, we had no State income tax and we do not now, but we did and do have an intangible property tax; that is, a tax on the holdings of intangible personal property, including the securities, of citizens. We have many citizens in our State who did own securities and filed an intangible property tax return.

One of the ways of checking against the accuracy of those returns was to see what they filed in their income tax returns with the Federal Government showing the income or dividends from their various corporate investments and notes or mortgages.

The program worked out was that the Governor would make the request, but

that the income tax returns when sent down, as they were in many, many cases, would be referred to the comptroller of the State of Florida who was the tax enforcement officer of the State. The Governor at that time, for those 4 years, did not see any of those income tax returns. There was no occasion for him to see them. It was simply a cooperative effort to see that the laws were obeyed and taxes were paid. I think it was helpful to both governments. I would not want anything that comes out here to jeopardize that procedure in any way, because many States that have State income taxes and the several States that have intangible property taxes rely upon the procedure, which is handled not for political reasons whatever, but for practical enforcement of the tax laws of those States.

I hope that this explanation will be helpful to the Senator from Michigan.

Mr. BAKER. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I yield to the Senator from Tennessee.

Mr. BAKER. Mr. President, I want to make sure that the junior Senator from Tennessee fully understands the thrust of the important remarks made by the Senator from Delaware. Do I understand correctly, according to the Senator's previous statement, that there have been seven instances of requests for tax returns by the executive department in this administration?

Mr. WILLIAMS of Delaware. Seven was the figure given to us the other day, but that embraced the tax returns for nine individuals.

Mr. BAKER. There were nine tax returns, but seven individual requests were involved?

Mr. WILLIAMS of Delaware. Yes.

Mr. BAKER. Do I understand correctly that the requests of the administration have been made in writing, in conformity with the requirements of the Internal Revenue Code?

Mr. WILLIAMS of Delaware. All requests under the Nixon administration have been in writing, in conformity with the regulations issued by Commissioner Thrower. The Internal Revenue Code states that tax returns will be issued upon the basis of regulations worked out by the Treasury Department and approved by the President, which means the administration can write them in

any way he wishes. Mr. Thrower has written regulations and the White House has concurred that it would be more orderly procedure to make the requests in writing each time and make the man sign for them. I think that is good. The way Mr. Caplin did it under the Kennedy administration, no record was made and nobody was accountable, which I think was the wrong method.

It was a loose and dangerous practice, yet I hear very little mention of that loose practice under the Democratic regime.

Surely they are not advocating double standards.

Mr. BAKER. Mr. Caplin, during his tenure as Commissioner of Internal Revenue, promulgated, and the White House at that time approved, a regulation which did not require such a request to be in writing. Is that correct?

Mr. WILLIAMS of Delaware. That is right.

Mr. BAKER. And the White House can approve it?

Mr. WILLIAMS of Delaware. It must approve it.

Mr. BAKER. So no written requests were made, and there was no way to tell how many returns were examined, during the Johnson and Kennedy administrations?

Mr. WILLIAMS of Delaware. I do not remember any figures being given as to what happened under the Johnson administration, but we were told that under the Kennedy administration they spent "days on end" examining taxpayers' returns.

Mr. BAKER. If the Senator will yield for one further question, the letter which the Senator referred to in his remarks was written by Mr. O'Brien and whom else?

Mr. WILLIAMS of Delaware. I read the press release and the statement which Lawrence O'Brien released as chairman of the Democratic National

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Committee. Mr. O'Brien was on the White House staff during the Kennedy administration.

Mr. BAKER. Was Mr. O'Brien, who made these charges, on the White House staff during the Kennedy administration?

Mr. WILLIAMS of Delaware. During the time he was on the staff, and later he was Postmaster General. I do not quite know in which capacity he was at which date.

Mr. BAKER. Who else was involved in the press release besides Mr. O'Brien?

Mr. WILLIAMS of Delaware. Mr. Mortimer Caplin.

Mr. BAKER. Mr. Mortimer Caplin. Was he Commissioner of Internal Revenue in the previous administration?

Mr. WILLIAMS of Delaware. Yes.

Mr. BAKER. Would Mr. Cohen have necessarily been involved in the promulgation of the regulations of the Internal Revenue Service with respect to the disclosure of personal returns?

Mr. WILLIAMS of Delaware. I would think so. There is no report of his changing the orders promulgated under the previous Kennedy administration.

Mr. BAKER. Who was the third signer?

Mr. WILLIAMS of Delaware. Mitchell Rogovin. He was also during that time in the Treasury Department and later moved to the Justice Department.

Mr. BAKER. Do we have any basis for knowing whether or not these three gentlemen were aware of these operations at the White House during the Kennedy administration—the examination of returns without written request? Has the Senator inquired into that, or does he know?

Mr. WILLIAMS of Delaware. I have. Certainly Mr. Caplin must know because he signed the order saying they could get them without written request. I think I know Mr. Caplin well enough to know that he would not sign a letter without knowing what was in it. One time as Commissioner he said that the White House could examine tax returns without written request—which I join the Senator from Tennessee in condemning as a rather loose arrangement for I think there should be some record. Later after Mr. Caplin left office he comes to the conclusion that such requests should be signed by the President.

Mr. BAKER. If the Senator will yield further to me, I would like to say I associate myself with the Senator from Delaware and my senior colleague in saying that this is an area where there is great potential for abuse. I personally will have to be educated as to why the executive department, or the President,

for that matter, should have access to income tax returns, but I am willing to be educated in that respect. However, I will point out that I think the illustrations the Senator from Delaware has made point out the necessity for a close examination of these regulations and point out, as well, that it is a situation of long standing that we should look into.

Mr. WILLIAMS of Delaware. I wish to point out that it is essential that there be some check over both the executive branch and the legislative branch.

The Senate Finance Committee and the House Ways and Means Committee have always delegated this duty to our staffs. I will cite an example. When we had the tax reform bill before us last December, the suggestion was made that a number of individuals as a result of loopholes in the tax law were escaping the payment of income taxes entirely. Of course a loophole cannot be closed unless we know what it is. We have very high caliber staffs on the joint committee, a staff that we trust completely. The committee staff examined many returns to see how that avoidance of tax took place. In that manner we were able to close the tax loopholes. I know I would not, and I doubt if any member of the Senate Finance Committee or House Ways and Means Committee would, examine the returns. There is no reason why we should. We were getting hypothetical cases of how those tax loopholes occur. That is an example of why it is necessary for committees to have access to tax returns.

The Senator from Arkansas (Mr. McCLELLAN) has done a remarkable job with his investigation committee in exposing corruption. The McClellan committee needs to examine tax returns, and he can get them with the permission of the President. I defend his right to see those tax returns.

Sure there are abuses, but until abuses are shown, let us not stop that right.

Other agencies have the right to examine income tax returns.

Health, Education, and Welfare gets those returns. The question was raised: why? A person can collect social security benefits, but if his earnings rise beyond a certain point his payments may be decreased or stopped. So officials in that department occasionally have to spot-check returns.

Do not ask me why, but the Department of Agriculture was listed in 1968 as requesting permission to examine the tax returns of 709 taxpayers.

The Department of Commerce has examined a number of tax returns. We find listed the FDIC. Of course the Department of Justice naturally would; it would be expected. The Federal Home Loan Bank Board. The Securities and Exchange Commission. The Small Business Administration. The Comptroller of the currency. The Federal Communications Commission. The Department of State. The Renegotiation Board. The Department of Health, Education, and Welfare. The Department of Labor. The Tennessee Valley Authority examined tax returns. The Department of the Army. The Veterans' Administration.

These are some of the agencies that examined top returns in 1968.

Several Senators addressed the Chair.

Mr. WILLIAMS of Delaware. I would like to finish, if I may.

The Civil Service Commission. The Department of the Air Force requested and examined tax returns. The Postmaster General wanted to examine the returns of four taxpayers.

The Secretary of Transportation. The Bureau of Accounts. The National Selective Service Appeal Board, and the Post Office Department itself. All those are agencies that in 1968 examined tax returns.

Maybe they are not properly circumscribed. If they are not we as much as anyone else should be to blame. But altogether, these agencies examined in 1968 a total of—

Mr. TYDINGS. Mr. President, will the Senator yield? The Senator has been holding the floor for some time.

Mr. WILLIAMS of Delaware. Yes, I shall yield. They examined in 1968 the returns of 3,393 taxpayers and this figure does not include those requested by the White House. We were told that 1969 would probably show a comparable figure.

Perhaps these agencies need these returns for various reasons. Certainly U.S. attorneys and the various agencies have to have them.

I yield to the Senator from Maryland.

Mr. TYDINGS. Has Mr. Mollenhoff asked for the tax returns for Governor Wallace or any member of his family?

Mr. WILLIAMS of Delaware. I do not know.

Mr. TYDINGS. Has Mr. Mollenhoff asked for the tax return of any Member of this body?

Mr. WILLIAMS of Delaware. I do not know what returns Mr. Mollenhoff asked for. The Commissioner told the joint committee that the returns of no elected official had been requested.

Mr. TYDINGS. Has he asked for the return of any U.S. district judge, or any judge of a circuit court of appeals?

Mr. WILLIAMS of Delaware. As I say, I do not know. The Senator can request the names of all of them.

Mr. TYDINGS. Agreed.

Mr. WILLIAMS of Delaware. Commissioner Thrower told our committee—and that is all I know about it—that under the Nixon administration there were seven requests from Mr. Mollenhoff involving nine taxpayers, I believe. The Senator from Tennessee is nodding his head. That it is nine.

Mr. TYDINGS. How about that letter? Shall we sign it together?

Mr. WILLIAMS of Delaware. Just a moment. A total of nine. And he said also that he felt he could not properly tell us the names, but he did say they did not involve any elected public officials. That means that Senators would not be covered. That was the statement we—

Mr. TYDINGS. How about any sitting judge or justice?

Mr. WILLIAMS of Delaware. I do not know.

Mr. TYDINGS. Would the Senator from Delaware agree that whether it occurred in the Kennedy administration or the Nixon administration, or any other administration, to let a political operative in the White House, with no background in investigative work such as having served in any investigative agency, have carte blanche access to the income tax returns of anyone in the United States, would be a very dangerous thing, and should be corrected by legislation?

Mr. WILLIAMS of Delaware. That is a leading question. The Senator was not here when I read the procedure under previous administrations so I would like

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to point out to him that the loose practice has been corrected. I agree with him completely that the manner in which it was handled before was very dangerous. Since the Senator was not

here, I shall read Mr. Caplin's method while he was Commissioner, because I do not think it can be pointed out too often, the loose manner in which it was handled under the Kennedy administration.

Mr. TYDINGS. I heard the Senator read about the Kennedy administration.

Mr. WILLIAMS of Delaware. I read also the way it has been improved under the Nixon administration.

If there are those who do not like the appointees of the President or do not like the President himself, that is one thing. But if this is a case where they do not trust Mr. Mollenhoff they ought to say so and state why.

Mr. TYDINGS. It does not make any difference who it is.

Mr. WILLIAMS of Delaware. Does the Senator know of any abuse in the manner in which the White House is now handling this problem?

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. SAXBE). The Senator from Delaware has the floor.

Mr. TYDINGS. When we write to Mr. Mollenhoff, the Senator from Delaware and I together, and get the names of those persons whose returns he requested, we can determine whether or not there are any political implications.

But I recall very well, when I was U.S. attorney, nobody saw income tax returns unless the Attorney General of the United States requested it for a specific investigation. No U.S. attorney or anyone else. The Internal Revenue Service handled them. Whenever income tax returns were used in the Government, they went through channels that were completely circumspect and outside the possibility of any type of political implications.

Now, if President Kennedy or any other President has a system whereby someone, not through the ordinary course of governmental operations, could, *carte blanche*, examine your income tax return or mine, I think that is a very, very dangerous thing. I think the apprehension of it can be most upsetting. We in the United States pay our taxes voluntarily. We are one of the few nations in the world where the taxpayers voluntarily pay their taxes, and we do it because we have confidence that the returns are confidentially handled.

To have it revealed here that the contrary has been done, I think, is very dis-

concerting, regardless of the administration, or whether the man's name is Mollenhoff, Jones, Smith, or anything else. It ought to be released only under specified statutory provisions, completely outside political channels.

Mr. WILLIAMS of Delaware. I would agree with the Senator and am glad that the Nixon administration has corrected the loose practice previously followed. But when he says "outside political channels" would the Senator say the Senate Finance Committee, which has access to tax returns under the law, the Ways and Means Committee, which has access to tax returns under the law, the Joint Committee on Taxation, which has access to tax returns under the law, the Committee on the Judiciary, on which the Senator has served—every committee of Congress—

Mr. TYDINGS. Right.

Mr. WILLIAMS of Delaware. Just a minute. Would the Senator say we have to be political in our motivation, or are we to—

Mr. TYDINGS. Absolutely not, because we do it under prescribed rules. In the Committee on the Judiciary, when we have nominations, no one sees that income tax return unless the individual member of the committee goes to the chairman, and he sits down alone, with no staff member. That is specifically within the lines of official work.

But to give to someone who is not in any way working for the Department of Justice, whose chief public mission is political in nature, the right to examine income tax returns, whether it is a Republican or Democratic administration, or any kind, I think, is a very, very upsetting thought.

Mr. WILLIAMS of Delaware. I am glad that the Senator is upset, because I, too, was upset at what was going on under the previous administration. But I want to say—

Mr. TYDINGS. It is a dangerous thing.

Mr. WILLIAMS of Delaware. But the point is, the law gives to the President the right—they have always had that right; that is the law—the President has it as President, and the U.S. attorneys could get these tax returns. They do get them. They have to get them.

Mr. TYDINGS. To try a case the Internal Revenue Service has already made.

Mr. WILLIAMS of Delaware. Surely they do.

Mr. TYDINGS. But they do not instigate it. The case is brought to them by an Internal Revenue Service intelligence agent, who received the case from a revenue agent, who acquired it through an audit. That comes in the normal course to the Department of Justice. The Attorney General has the right to ask the Internal Revenue Service for an income tax return, but that is a part of the day to day operations of the Department of Justice. That has nothing to do with someone who has a political background, who has responsibilities in political campaigns, having the power to go and take anybody's tax return and look it over.

Mr. WILLIAMS of Delaware. Mr. President, let us get it straight. There is much being said here hypothetically.

I said earlier that President Nixon had laid down rules that these tax returns were not to be available under any circumstances to Mr. Mollenhoff or anyone merely on the basis of examining whether Joe, Tom, Dick, or Harry was paying his proper income taxes, but only in cases where there may be abuse of the public trust.

I am just trying to review the record and outline the law, and I do not want to get into a political discussion of whether Members on the other side of the aisle wanted Mr. Nixon as President, or whether they would have had more confidence in a man Mr. Humphrey would have appointed. That is not the point. The President, not the Senator from Maryland, appoints his Chief Counsel. Every President has appointed someone to represent him. If some Senator feels it is being abused he should spell out the charge. But I will say, as I pointed out before that the Nixon administration has laid down rules whereby this is done in writing, and that is more than was done before. So let us at least give them that much credit.

If there is still abuse, that is another matter. The Commissioner made it clear to our committee. He said that of those that were requested not one of them involved an elected public official. That is all I know.

Mr. ALLOTT. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. In just a moment. There have been seven requests

for nine returns, each of them putting in writing the name of the man.

There is this danger about releasing the names, and I understand it. I point out one case they cited and said we could use it, hoping we could do something about it: An allegation came into the executive branch that a member of the Federal bench—the complaint came from someone who thought his sentence, perhaps, was too harsh—but the report came in from this individual that this judge himself was just as bad or worse than the man convicted.

They called for that man's tax returns. They found that in 8 out of 9 of the preceding years before he was nominated and confirmed by the Senate he had not filed a return nor had he paid his income tax. He did file a belated return just before his name was sent to the Senate, and he was confirmed by the Senate, and he is a member of the Court today. The President in power at the time should have checked that or the committee should have known it. I hope we can get that man to resign. If not I hope there is enough interest in the Senate that we can take him off the Bench. He should not be the judge of his fellow man when he himself would not pay his own income taxes.

Mr. GORE. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. The White House has tried to assure that this power is exercised with discretion. No business operations are threatened with tax investigations, nor has the FBI been sent around at late hours in the night.

I promised to yield to the Senator from Colorado.

Mr. ALLOTT. I thank the Senator for yielding.

First of all, the Senator has also referred to this: The man who made this press release, Lawrence O'Brien, occupied a very, very political position with President Kennedy during the time that these orders were made or access was made to the IRS files by Mr. Bellino. Is that not true?

Mr. WILLIAMS of Delaware. That is true. The charges were made out of the office of the Democratic National Com-

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mittee by Lawrence F. O'Brien, as chairman of that committee.

Mr. ALLOTT. I think it would be interesting to have Mr. O'Brien answer the question—perhaps the press would be kind enough to put this question to him—perhaps the press would be kind enough to put this question to him—as to whether or not he examined any income tax returns during the time he was with the President in the White House.

Mr. WILLIAMS of Delaware. I would welcome his answer personally. I would doubt very much that he did. I would be surprised. I said earlier that I do not question that Mr. Bellino may have kept this confidential. I do not know of any evidence otherwise. But the fact is that under that Kennedy administration he examined tax returns without written request—if we want to use the word that the Senator from Maryland used—wholesale, by going in and getting any return with no records made. I think that was a very loose operation. I think the man's name should be on record so there would be responsibility if we found they were abusing this and turning it into political persecution—and it could be; let us face it. I recognize that danger. Then we could go back and see who the President's representative was who called for the returns, and why.

Mr. TYDINGS. How would we know?

Mr. ALLOTT. Mr. President, the Senator yielded to me.

Mr. WILLIAMS of Delaware. I do not know how we would know, any more than the Senator or I know, as a member of the committee. The only way I know in which I could satisfy some people would be to say that only the members of the Democratic Party could do this. I am getting tired of this political bickering. The Senator asks how we would know that some man down there is not going to abuse it. We do not know. We do not know that the President of the United States is not going to do something wrong. We do not know that JOHN WILLIAMS or that JOE TYDINGS is not going to abuse our public trust. But let us not start asking questions and question the integrity of a man until we know what we are talking about.

Mr. TYDINGS. We have guidelines.

Mr. ALLOTT. Mr. President, will the Senator yield to me?

Mr. WILLIAMS of Delaware. I have not heard of any case that has been abused.

I yield to the Senator from Colorado.

Mr. ALLOTT. The Senator from Maryland has had an opportunity to intervene in this matter, and I would like an opportunity, also.

I, together with Senator MAGNUSON, who is chairman of the Independent Offices Committee, got a real shock in this area in the hearings of 1965, and I want to refer to specific pages in those hearings, from 1080 through 1105, in which will be found a complete discussion of the access of the Federal Trade Commission—of all things—to the IRS files.

They first denied that they had access to them, and I read Paul Rand Dixon's answer:

What we got off the income tax was names, sir; that's all we get.

Before we got through examining him, we found that they were maintaining a staff of three or four people all the time at the IRS—all the time. This was in 1965. Because of the investigation and the questioning we subjected them to—both Senator MAGNUSON and I—that practice, according to the subsequent statement of Mr. Dixon, next year was not resumed. It was stopped.

Is this not the fact: The very man who set up the regulations—which were no regulations at all, in effect—for Mr. Bellino in 1961 is the man who today signs a letter, which the Senator has placed in the RECORD or has read into the RECORD, which says that this is an illegal act.

Mr. WILLIAMS of Delaware. That is correct.

Mr. ALLOTT. Mr. Mortimer Caplin, to be specific.

Mr. WILLIAMS of Delaware. Mr. Caplin now says that what he did while he was Commissioner was illegal, and he said the requests should be in writing. They are in writing now.

I think this is an area in which we should be ever cautious. I would have appreciated it, and I think I would have equally as such respect for Mr. Caplin's position, had he written the committee rather than writing the Democratic National Committee. I do not know what he figured the Democratic National Committee could do about it, except politics. Mr. O'Brien said:

If this action is not taken voluntarily, we are prepared to initiate legal action that will end this practice.

He was condemning a loose practice that his own administration initiated but which has been corrected long ago by the Nixon administration. But I guess they will not initiate prosecution retroactively on themselves.

I think this matter should be put into proper perspective, and called what it is, namely, gutter politics. They have tried to give the impression throughout the country that these tax returns under the Nixon administration have been used indiscriminately. They have not, and that is the point. And the Commissioner has said that there has been much less use in this administration than heretofore. There have been seven requests with nine returns.

Here is another letter which I will put in the RECORD, dated August 10, 1964. This is addressed to the Honorable Bertrand M. Harding, the Acting Commissioner of Internal Revenue, in Washington:

DEPARTMENT OF JUSTICE,
Washington, August 10, 1964.

HON. BERTRAND M. HARDING,
Acting Commissioner of Internal Revenue,
Washington, D.C.

DEAR MR. HARDING: In connection with an official investigation, I would appreciate receiving uncertified photostatic copies of the income tax returns for the years 1958 through 1963 for the enclosed list of taxpayers.

It is also requested that these returns be forwarded to Mr. Walter J. Sheridan, 450 Milner Building, 210 South Lamar Street, Jackson, Mississippi. In the event these returns are not located, it is requested that Mr. Sheridan be notified at the above address.

Your cooperation in this matter is greatly appreciated.

Sincerely,

HERBERT J. MILLER, Jr.,
Assistant Attorney General.

I do not know who Mr. Sheridan is. I would hope he was the U.S. attorney.

Let us not try to make a mountain out of a molehill. I have yet to hear one man anywhere speak of a specific example of abuse of handling these returns under the Nixon administration.

I recall that years ago a Member of the Senate was censured for trying to condemn his fellow man by innuendo, without specific charges. If anyone has any question to raise concerning abuse, name the case, and I will help to have it

checked. If he is right I do not care who it is; I will help to correct the abuse.

Let us not say, "Did he get the return of Mr. X," and throw out a lot of names. I think it is unfair to any man. Merely asking such a question indicates suspicion on the part of the man who does so. It is unfair.

Mr. ALLOTT. Does not the question alone, "Did you get the return of George Wallace?"—

Mr. WILLIAMS of Delaware. That alone constitutes a semicharge, and I am surprised at the man who did it.

Mr. ALLOTT. Does that not constitute a sort of cloud itself?

Mr. WILLIAMS of Delaware. It is, and it is wrong.

I would say that if any official in the executive branch of the Government—I do not care if it is Clark Mollenhoff or my own brother—is getting tax returns of the average citizen, as a member of the executive branch, not a member of the Bureau of Internal Revenue, for the sole purpose of seeing whether or not that citizen is paying enough taxes or as a political threat, that is wrong. If a man has done something wrong as a Government official or as a prospective Government official, when there is such an allegation involving a Government transaction, it is their business to check. I only wish such a check had been in force under some preceding administration, because then we would not have a Federal judge sitting today, passing judgment on American taxpayers, who in private life did not pay his income taxes.

Mr. SPARKMAN. Mr. President, will the Senator from Delaware yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. SPARKMAN. I want to seek some information because we hope to finish this bill today and we expect a rollcall. I hope that Senators still in the Chamber—

Mr. WILLIAMS of Delaware. I hope so, too. I told the Senator that I would not be but a few minutes, but I do not want to shut off this colloquy—

Mr. SPARKMAN. I realize that, but a good many Senators have asked me when they could get away because we expect a rollcall vote some time today—

Mr. WILLIAMS of Delaware. Well, we are dealing with a very important subject here, and I think they are all anxious to stay around and get a better understanding of the law.

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Mr. SCOTT. Mr. President, if the Senator from Delaware will yield, could I ask whether he himself intends to ask for a rollcall on the bill?

Mr. WILLIAMS of Delaware. I understand it will be requested; yes.

Mr. HANSEN. Mr. President, will the Senator from Delaware yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. HANSEN. Mr. President, I thank the distinguished Senator from Delaware.

I should like to compliment him on the job he has done in looking into a situation that, up to now, or rather, before he spoke, might very well have been presumed, in the minds of a great many people, merely to reflect upon the political activities of the present administration.

I join the other Senators who already have expressed their strong convictions that this system is not a reprehensible one, that it is defensible, that it has resulted in real benefit accruing to the people of this country.

Let me say, Mr. President, that I do not think the average taxpayer is too much disturbed about having his tax returns examined. Obviously, most of us would hope that those near neighbors of ours would not have the pleasure of trying to make comparisons between what we may do and they may do; but so far as the average taxpayer in this country is concerned, I do not think that he fears an examination of his return by the President, or by anyone else, because I happen to believe that most of the people in this country are honest.

I do not think it is fair at all to allege that we will destroy the whole system, if we let the cat out of the bag to the effect that former Presidents and former staff members of Presidents have examined tax returns. I do not think that any President, insofar as I know of—not a single one—has exercised that authority capriciously.

I would ask my distinguished colleagues on the other side, and on this side of the aisle as well, whether they are concerned, if it disturbs them that 106 or 108—whatever the number was—persons working for the Internal Revenue Service who have been convicted, a number of whom are now serving their sentences, does that disturb them? It surely

does not disturb me and I do not think it disturbs the average taxpayer at all, that in this country of ours the President of the United States and certain committees of Congress are going to be looking into the returns filed by all taxpayers. It does not make one bit of difference if they happen to be, at a precise point in time, the Collector of Internal Revenue for the United States, that they, too, are not going to be exempted from the scrutiny that should be assured all the people will be exercised by this Government, by the checks to which the Senator from Delaware has already referred, which constitutes the best assurance I know of that we will be treating all the people in this country alike. I do not know of a single taxpayer in this country—are there 70 million—35 million?

Mr. WILLIAMS of Delaware. Eighty million.

Mr. HANSEN. Eighty million taxpayers. I should think that when 106 people, who have served the Government of the United States in the collection of taxes, have been convicted of violations, that this was the best way, the best possible way I know of, to convince the more than 210 million, or however many millions of people there are in this country today, that this system is good. We are calling upon the people of this country voluntarily to tell the Government what taxes they owe.

I, too, resent the questions that were put to my distinguished friend from Delaware by saying, "Has this person's tax return been examined?"

We could very easily turn around and ask our friends on the other side of the aisle, "Has that person's taxes been examined?"

I do not know.

All I can say is that Mr. Mollenhoff is answerable to the President of the United States. The President of the United States was elected by a vote of the people of this country. I recognize his right, and I defend him in his right, to name whoever he wishes to serve as his representative. I leave it up to the good judgment of the people of this country. When they no longer want to extend the mandate they granted in 1968, let that judgment be made by the people of this country.

If Mr. Mollenhoff, or whoever may serve under any President, those who served under President Truman, those

who served under President Roosevelt—I do not know under whom Mr. Noonan served, the former Commissioner of Internal Revenue who was convicted and who served time; but I am certain it was not the intent of the President of the United States, whoever he was, under whom Mr. Noonan served, to have that kind of business going on. I do not think it is up to us to say that in our judgment, Mr. Mollenhoff is a political operator.

There are many people serving in high positions in Government today. The important thing is that they have the confidence of the President of the United States and that their actions be judged in the light of the good sense of the people of this country; and if they do not like the way that business is being handled, there is provided the opportunity every 4 years to change that around.

I have every confidence Mr. Mollenhoff will act in a most responsible fashion to serve the Presidency of the United States. If it just happens that some read into his actions a political motivation, let it be noted that he has asked for the tax returns of only nine individuals and that he made seven requests to get the nine returns. Compare that, if you will, with what was done under President Kennedy. But I am not objecting to that. I think it is good. I am proud that Senator McCLELLAN has done the great job he has in this country. I am just delighted. I think that all the people of this country are far better off, because he had the right, as Chairman of the Committee on Government Operations, to make the investigation he has. Had he denied that right, this country would be far worse off than is now the fact.

I do not think there is any validity to the charge. It would occur to me that if I wanted to be political, that what may have started out as an allegation that seemed to have some political connotation, in the light of the discussions which have been made by the distinguished senior Senator from Delaware, has now been turned right around. I do not blame those who complained. It is like the man who caught a wildcat and would like someone to help him turn it loose.

Mr. WILLIAMS of Delaware. Mr. President, I shall yield the floor in just a

moment, but I want to make just one point here, in case what has been said may be interpreted as a criticism of Mr. Bellino who was the man examining the returns under the preceding administration without written requests. I knew Mr. Bellino when he was serving as the counsel of the Committee on Government Operations. I knew him personally. I had tremendous respect for Mr. Bellino. I am confident, based on my knowledge of him and on the Senator from Nebraska who was also on the committee and who knows Mr. Bellino, that he did not turn this into a political persecution operation. I have that much confidence in him. I want the RECORD to show that. I did not raise the questions, but I do think it would have been better to have had his requests in writing.

President Kennedy had the right to outline, as the law says, the regulation under which it operates, and as the regulations were outlined there would be no written request. I wish there had been. I am glad that the present administration is using written requests only; but, nevertheless, I do not attribute to Mr. Bellino any suggestion that he was doing anything in his capacity other than that which he should have done as a representative of the President.

At the same time I would hope that those who frankly admit they have not been able to raise any charge of improper handling of these returns as far as Mr. Mollenhoff is concerned would extend to him the same degree of respect. There is no evidence that I can find which would show that Mr. Mollenhoff has not acted with discretion. What are they scared about?

If there is something wrong and Senators want to change the law let us get to it. We have the same objective no matter which side of the aisle we are on. We are not going to accomplish anything on a partisan basis. We would not render any service to our country.

In the heat of such a political discussion we might leave the impression that the integrity and the secrecy of tax returns are not being properly respected. I think that they are. There is no evidence to the contrary. And let us not make any charge by innuendo.

Such low tactics are below the dignity of the Senate.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I shall yield to the Senator from Nebraska and shall then yield the floor.

Mr. CURTIS. Mr. President, I thank the Senator. I am sure I speak for many

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in the Chamber in expressing gratitude to the Senator from Delaware for setting the record straight.

It is very clear that the actions of Commissioner Thrower, the Office of the President, the President himself, and Mr. Mollenhoff were in accord with both the law and the regulations.

So far as Clark Mollenhoff is concerned, he does not need any defense. Clark Mollenhoff is a man of the highest integrity and character. He is a lawyer and is well trained. There is not a man in Washington that has researched as many investigations as Clark Mollenhoff has.

People who might wonder about Clark Mollenhoff are not those that are afraid that he would be a party to something wrong, but they are rather afraid that he might be pursuing the public interest.

I again commend the distinguished Senator from Delaware for clearing up an item that might be disturbing the American people.

I am just politically minded enough to want to say a kind word about Lawrence O'Brien. The chairman of a political party has a very tough job. He has to build the business day after day. And some days business is poor.

He has to support candidates that are strong, and he has to support candidates that are weak.

The chairman has got to stand there and push ahead all the time.

I hope that those who are his superiors will not be too rough on him for his error in this matter.

Mr. Caplin and Mr. Cohen particularly should have caught the error, because Mr. Caplin is on record in writing for a position which is apparently totally contrary to what he advised Mr. O'Brien.

I hope that those who are Mr. O'Brien's superiors will be forgiving because the burden on the chairman of either party is very heavy. He has to try to support

candidates and some of them are not very good candidates.

Mr. WILLIAMS of Delaware. Mr. President, I thank the Senator. I concur in that statement. I thought the record should be set straight because these questions have been raised.

I have had many Senators who are not on the committee ask whether there has been a violation of the law. And I thought the record should be set straight.

I want to say that there is no evidence to substantiate such a political attack as that made by Mr. O'Brien. No suggestion has been made in any committee meeting that I have attended indicating that anything improper has been done in the handling of these returns by the executive branch under the preceding administration, under this administration, or by any congressional committee.

When the question was raised as to HEW, someone asked, "Why do they need tax returns?" We found that they need them to check the information on social security benefits.

There may be a reason for all of this. If abuse is shown anywhere we want to handle it, but let us handle it in the best interest of the revenue service, not as a political issue.

I thought that we should get the record straight from the beginning so that we would know that it is not something unusual when tax returns can be examined by a representative of the President. It has always been done. It should be done. I would not have much respect for any man in the White House who did not discharge his responsibility when something was called to his attention.

I have the utmost respect for both Mr. Bellino and Mr. Mollenhoff, but there can always be something to go wrong. We should be on guard for that.

I think that the chairman of our Finance Committee, who is also the chairman of the Joint Economic Committee, should be commended for calling the committee together promptly in order to determine the basis of Mr. O'Brien's charges.

If someone raises a question of abuse tomorrow I would say that we should examine it. It should be examined. If there is any basis for it we should clear it up and correct it. If the manner in which the returns are being handled by the agencies or by the various divisions of the executive branch of the Govern-

ment or by congressional committees is improper let us face it.

I know the chairman will bear me out. We were all surprised when we found the vast number of executive departments that had had access to the returns over the past several years.

Mr. LONG. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. LONG. Mr. President, I am happy that the Senator brought this matter up. It is a matter that should be considered by the Senate. It should be discussed.

About a week ago, Chairman MILLS, after having heard the story that Mr. Mollenhoff had access to income tax returns, suggested to me that we should meet. I agreed and we would have met perhaps a week sooner had we been able to get all the Members together quicker.

Certain things came to my attention which I thought we should act on. For one thing, it is important for all to understand that no citizen has any right to object to the President or to a Government agency, such as the Justice Department, taking a look at his tax return on a completely responsible basis. For one to look at a man's tax returns for an improper purpose, of course, is something that everyone has the right to object to. I believe we would all agree that the Bellino precedent is really not very good. It is not good to send someone over without a written authorization from the President and without any written authorization at all to look at anyone's tax returns. Obviously, that is not a good practice.

My impression is that this precedent did not continue under the Johnson administration.

Mr. WILLIAMS of Delaware. The Senator is correct.

Mr. LONG. Mr. President, it would be fair to say that President Johnson did not follow this practice at any time. If he had, we would find out, I would think.

Mr. WILLIAMS of Delaware. Mr. President, I made that statement earlier.

Mr. LONG. Mr. President, in this particular instance, I would suggest that we should pass a law to say on just what terms and conditions a person designated by the President is entitled to see someone's tax returns.

As far as I am concerned, the President, himself, is entitled to see everyone's tax returns. But I do not think that

when that authority is delegated, it ought to be spelled out in writing. The President ought to sign a document saying, "I designate Mr. Mollenhoff, or whoever it may be, to be my man to look at certain tax returns for these specified purposes."

Then we would know who the man is and why he wanted to see the returns.

I hope that the Senator will agree that when one goes to look at a tax return, he ought to make such a request in writing and state why he asked to see the return, and whose return it was, so that if he is doing this thing in an irresponsible way, this fact could be expected to come back and haunt him, in the manner in which this Bellino matter came back to haunt him.

The Senator knows as well as I do that what we have here might not be as much a matter of serious concern as the fact that Governors have this tax information available to them, perhaps altogether too loosely.

It seems to me the procedure we spell out for the President should apply to Governors as well. If someone wants to see a tax return, there should be a record that he wanted to see it, why he wanted to see it.

As the Senator from Delaware knows, members of the Committee on Finance and the Joint Committee have the right to see tax returns. I do not recall of any case where we asked to see the actual name of the individual involved or the company. We normally say we would like to know if company A did this, and if they did, then how much was involved and the other pertinent facts.

Mr. WILLIAMS of Delaware. The Senator is correct. In addition, if a return did have to be examined we had Mr. Woodworth or his staff do it as the case of Mr. John Doe. It would be highly improper for the Committee on Finance or any other committee of Congress or anyone in the executive branch, wherever it may be, to start examining tax returns on an indiscriminate basis. That is not what we are here for. We have the Internal Revenue Service to do that. In the Committee on Finance we were examining returns to see if there were legal loopholes in the law that needed to be corrected from a legislative standpoint only. The various agencies should look at them only in the administration of their duties and not on the basis of

anything else, and as I understand it that is what is being done.

If there is evidence of violations by any agency of government I would be the first to rise to oppose it because I would not want that to happen. We do have to protect the American taxpayer. We collect this money on a voluntary basis, but at

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the same time we have to convince the American people that we are on guard trying to protect their interests and at the same time trying to assure that there is not only secrecy in the tax returns but also integrity on the part of the officials administering the agency.

I think something good may come of this discussion here today because, as the Senator pointed out, there can be problems particularly as relating to the States and other agencies. Maybe we in Congress need tighter rules; maybe the White House needs tighter rules. But let us do it working together with one thought in mind, and that is to promote a better government. I have no evidence that there was improper use made of tax returns under preceding administrations or this administration, none whatever.

I have expressed my high regard for Mr. Bellino. I have the same high regard for President Nixon and his representative Mr. Mollenhoff, and I hope others share that high regard. I am going to respect all of them until somebody comes in and says that a certain particular case was handled wrong. When it comes to that I will examine the matter on its merits, and whoever is responsible will be held accountable. Meanwhile let us not lose respect for our fellow man nor try to discredit him for partisan political gain.

I yield the floor.

PRACTICE BY EXECUTIVE BRANCH OF EXAMINING INDIVIDUAL TAX RETURNS

Mr. GORE. Mr. President, this is a very disturbing matter that has been discussed here. I wish the record to show that I have not referred to any action of President Nixon in this regard.

Mr. MANSFIELD. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. GORE. A number of statements have been made with respect to Presidential action with regard to the issuance of regulations.

The committee session which I attended did not have any evidence of any action on the part of President Nixon at all and I do not wish to allege any. I have not made reference to any.

I did make a statement that the procedure appeared to be loose, indiscreet, inadvisable, and I will say again improper, and as I said it was open ended.

Here is what we have: A memorandum of conversations between Commissioner Thrower and Mr. Clark R. Mollenhoff. The memorandum states:

Following through on our recent luncheon conversation—

I then come to the sentence:

I would suggest that every time you have occasion to inspect a tax return, application for exemption, or other Internal Revenue file, you send me a memorandum briefly setting forth the nature of the request. Naturally—

Listen to how tight this is.

Naturally, we will infer in every case that the request is either at the direction of, or in the interest of, the President.

The Commissioner testified he had had no instructions from the President orally or in writing, and yet this memorandum stated he naturally assumes that every request will be at the direction of or in the interest of the President. What does "in the interest of" mean?

I shall read another sentence:

After receiving your request, we will make arrangements for the files to be assembled in my immediate suite of offices here and we will notify you as soon as they are ready for inspection.

Real accommodating, is it not? Real accommodating.

If, after inspection of the files, you want copies of any of the material inspected, we will be happy to make them for you.

Mr. President, I say this is an indiscreet way to treat a taxpayer's tax return. Who whispered to the distinguished senior Senator from Delaware that a tax return of a judge had been pulled and examined? Nobody whispered that to me. Has anybody whispered that to the

chairman of the committee? Who whispers this about? How does it come that political figures are alleged to be involved, that hints are being whispered about them? This is disturbing.

I do not say the President had anything to do with it. I do not know. I would be inclined to think he did not. But by what right, by what possession, does the Commissioner of Internal Revenue say that he will assume that every request Mr. Clark Mollenhoff makes is at the direction of the President or in the interest of the President?

If nothing else comes of this, I hope we will arrive at a formalized procedure, because this is loose. I think it is irresponsible and improper. I cannot say it is illegal. I had previously thought it was. I am not prepared now to say so. But I want to make it so it is illegal.

This is not to question the right of the President to have access to a tax return. I do not question it. I think he should. I think if congressional committees have a need to know, it should be made available to them. But this does not go to a political operative going on a fishing expedition to find out what he can about tax returns.

Somebody might write a letter about another judge. Nothing has been alleged here with respect to the instance cited. Who has whispered the facts or the name? I do not know the name or the facts, but nobody has alleged that the judge did anything wrong. Nobody has alleged any criminal acts. I just do not know the circumstances. I will not presume what the circumstances are. But if the contents of one taxpayer's files can be whispered about, the contents of every taxpayer's files can be whispered about.

We need to formalize a procedure to preserve the privacy and the confidential nature of the tax returns of every taxpayer.

Mr. ALLEN. Mr. President, much attention has been directed today in the Senate to the controversy between the Democratic Party chairman, Lawrence F. O'Brien, and Republican chairman, Rogers Morton, concerning the wisdom of a discretionary power in Mr. Clark Mollenhoff to investigate income tax returns of private citizens.

I have no evidence to indicate and no reason to believe that Mr. Mollenhoff has abused his discretionary power. On the other hand, I fully understand the concern of some that such a power could be abused if it were used strictly for political purposes.

It occurs to me that our concern about possible misuse of power to investigate tax returns might be more profitably directed toward the Internal Revenue Service. The possibilities of abuse at that source would seem limitless since IRS has access to all income tax returns.

For example, on April 13, 1970, a newspaper account indicated that a special task force of Internal Revenue agents had been assembled in Alabama and are asking questions about eight named political figures in Alabama, one being the brother of a candidate for statewide office and five of whom are currently campaigning for office in the State Democratic Party primary scheduled for May

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5, 1970. These newspaper accounts cite "confidential field reports" and allegations made in a confidential report of the Internal Revenue Service's Audit Division as source of authority.

Mr. President, no one questions the right of Internal Revenue agents to investigate income tax returns if motivated by the duty to protect the public interest by fair and impartial enforcement of the law. On the other hand, if the investigation is motivated by political considerations—that is another story.

It stands to reason that any publicized investigation by the Internal Revenue Service tends to create a suspicion, to say the least, and suggests the possibility of a violation of law.

The newspaper accounts state that the investigation is still in its preliminary stages and that no charges have been brought against anyone. Nevertheless, the publicity concerning the investigation was allegedly based on information obtained from the Internal Revenue Service. The election is less than 3 weeks hence. The candidates named in the publicity are placed in a grossly unfair

position of being compelled to refute the implications of the announced investigation.

The timing of this investigation has created questions in the minds of many Alabamians. They want to know if the investigation is politically motivated and who is responsible for the timing and for the release of supposedly confidential information if any such information was, in fact, released. It seems to me that these are valid questions.

Mr. President, I campaigned for the office of U.S. Senator from Alabama emphasizing among other things my sincere conviction that the Federal Establishment should not undertake to interfere in State political races. I hold firmly to that conviction.

I hope sincerely that we have not witnessed in Alabama a pattern for future political activities of this or any other administration.

EXHIBIT No. 106

MEMORANDUM

THE WHITE HOUSE
WASHINGTON*File
Kalmbach
as above.
10/24*Eyes only

OCTOBER 2, 1972

FOR JOHN DEAN

Herb Kalmbach, thinking ahead to the possibility of the matter of privilege being raised at some time or another, suggested that there should be a written retainer arrangement in existence in advance.

He has written out this long-hand draft. I'm sure you'll find the basic question of whether or not such a letter is advisable to be the first hurdle.

If you think that one may be inadvisable I would suggest you talk to Herb direct. Otherwise, would you work on a revision?

John D. Ehrlichman

Dear Mr. Kalmbach:

For your file, this letter is to confirm that you have been and are now acting as legal counsel to the White House on various assignments. In such capacity, as our legal counsel we expect you to treat these matters as being entirely confidential. We consider all aspects of these assignments to be within the attorney-client privilege and you are therefore precluded from making any disclosure with respect to these matters.

Should you be requested to comment on any of your legal assignments in this regard we instruct you to invoke the attorney-client privilege rather than respond.

EXHIBIT No. 107

Conversation with Clark MacGregor.

E. Ehrlichman.

M. MacGregor.

E. Hi, Clark. Gee, you're nice to call back.

M. Well, you bet, sir, I'm sorry I was away. I went to one of those very exciting dedication ceremonies of the new building and housing with Federal Power Commission.

E. Say I missed that. But I just want you to know it wasn't because I wasn't invited.

M. I want to give you a detailed report.

E. That's why I called, really.

M. We may get around to that someday. Actually, I think that's a great idea—they have a new building in the north capitol street area near Union Plaza area in that old, it's been torn up so much and they have a federal agency in there. I think it's a darn good idea.

E. It helps the town. I am asking you to plumb your recollection, Mr. MacGregor. Back in the days following the Convention we were all at the convention and then if you will remember, the President went to San Clemente for five or six days and then he went on to Honolulu.

M. Yes, I remember.

E. Do you remember a sequence of events where we hatched a plot to have Clark MacGregor go out and make disclosures on the Watergate case? And said——

M. Yes.

E. And said, wouldn't it be an ideal time when the President is in Hawaii so that he's detached and so on and so forth?

M. I do recall it.

E. And we had extensive discussions and I'm, what I'm trying to track down is a memo that was written about that and I can't find any record of it and it may be that I am just imagining that there is such a thing.

M. John, I don't honestly recall a memo. Now, as I think back on that it may be that my recollection will change but I recall the circumstances that brought me to San Clemente and I think I came with some reluctance but not because of Watergate, because——

E. Other things you had to do.

M. Yes, that's right, and because Bob Haldeman said to me that he felt that it was imperative that I come out and visit with Bob and with you about the question of if you will White House oversight of Committee activities in certain key states.

E. Oh, yes, that was the problem we discussed at the convention and so on. Yeah.

M. And directly to our discussion which you and Bob and I think Fred Malek and I had a meeting in your office and that consumed much of the morning. We were—I think you and Bob and I were on some other matters for part of the morning in Bob's office: then it seems to me we convened really in your office with Fred Malek and then we met briefly with the President; then we trooped up to hear the President respond to the questions put to him and that was August 29 in the outdoor, sort of out door give and take session he had with the press.

E. Yeah, yeah, good for you.

Well, the thing that I am trying to recall is the details of this concept that we should make a clean breast of the Watergate right at that time. It becomes material in this whole investigation that's going on now only for the question of the part that John Dean may have played in giving advice that we ought not to do it at that time.

- M. Again, I'm going to rely on recollection and I'll look at home tonight, John, because I didn't retain a great many papers. I thought it was no purpose behind, somebody else was going to be the historian, but I do recall that sometime in advance of that San Clemente discussions which we just covered, which took place on August 29, sometime prior to that the idea was voiced by Maurice Stans or others that maybe I ought to go before the press and say here's the written accounting of what transpired and I'm prepared to answer your questions about this and that although I never saw a memo I did see a draft, a rough draft, which I think was the one filed through John Dean, which consisted of five to seven double spaced pages on regular 9 x 12 paper, non-legal size paper with a sort of a historical summary. That I know, that particular paper, I think probably came to my attention in my campaign office at 1701 sometime a week to two weeks in advance of the Republican Convention and it resided for some time in my right hand drawer of the desk where I kept papers that I wanted to pick out and look at from time to time but haven't decided to act on. I don't recall that there was any accompanying memo at any time or anything in letter form that referred to the question of whether Clark MacGregor should make this statement.
- E. We had some pretty heated telephone conversations, as I recall, about your doing this.
- M. Well, I think that may be right.
- E. Yeah. You decided in your own mind that it was not a wise thing to do and we went back and forth, back and forth on it. Is that about right?
- M. Yes. Maybe. I think—I felt one of, well, I think you may be right, but I'm trying to probe my own recollection, my own motives.
- E. Yeah.
- M. It seems to me I felt at that time that certain things that were set forth there were things that were strange to me and that I would not be able to handle very well in terms of questions. And I think that rather than the question of the issuance of something it was a question of whether I was the appropriate person to . . . Maury Stans at that time was saying to me he wanted to do it.
- E. Oh, yeah. Yeah, I remember that, and you felt, in fact you said what would I say if they asked me to vouch for these things and at that time you had conducted no independent investigation.
- M. Except you should know that what I did was during the first week of July, that would have been on Monday, July 3, for the few people who were around and then more extensively on Wednesday, July 5. I did ask to come into my 1701 office Fred LaRue, Jeb Magruder, Herb Porter and two or three others and simply close the door and put it to them face to face.
- E. One by one?
- M. Yep, did you in any . . . were you in any way involved or did you have any prior knowledge before June 17 of the events that are known as the Watergate?
- E. And they said no?
- M. Yeah.
- E. OK, if you find it convenient and could rummage around and see if you have anything on that particular transaction, I'd be very grateful to you.
- M. OK, I will, John, I'll be looking for that, as I say, that double spaced, I can remember it was on white paper and it was on first sheets, not onion skin and I don't know that it had any particular title, but it did run 5-7 pages.
- E. And it would be a sort of a script of what you might have said? Is that it?
- M. Or issued, or handed out to the press. Kind of a white paper.
- E. I get it.
- M. I think it was referred to by one or more persons at that time as a white paper.
- E. Well, the memo I had in mind was one that I wrote that was a conceptual thing that said this coincidence of event were coming off the convention, McGovern is our opposition, Clark MacGregor is a bright new image, the President will be in Hawaii—why not take advantage of that coincidence of factors and let's make a clean breast of things.
- M. I recall that what you have just said was presented to me I think partly by Bob Haldeman and partly by you but I don't recall ever seeing it in writing.
- E. Yeah, yeah. OK.
- Thank you, Clark, sorry to have bothered you.
- M. Oh, no bother.

EXHIBIT No. 108

Conversation with Ken Clawson

- C. Clawson.
E. Ehrlichman.
E. You called me?
C. No I didn't call you.
E. I'm sorry. I got a message at home to call you. I'll be jiggered. Is this Ken Clawson.
C. Unless it was Jim Clawson.
E. Couldn't have been. Isn't that strange. Gee I hope I didn't wake you up.
C. I'm out of it with this damn cold.
E. Oh, that's too bad. While I have you could I ask you something. I'm awfully sorry to bother you. You may recall a meeting in my office which I think you sort of convened to talk about a press report during the Watergate aftermath, when it broke, a press report about Hunt's safe being in the White House. And you and Chuck and Bruce Kehrli came up here and met with Dean and me to talk about what you know what our response should be and so forth. Do you remember that?
C. Vaguely. I remember better an earlier meeting in which the question was should we give out Hunt's dates of employment and what Charley's role was in hiring him.
E. Yeah. Well, this focuses particularly on what we ought to do about the contents of the safe, what we ought to say to the press, what we ought to do about Hunt and so forth. Do you have any present recollection of that?
C. A vague memory, yeah, but I don't recall any of the details of it.
E. Well, it's interesting because Dean who as you know has talked to the U.S. Attorney at great length, cites some comments of mine in that meeting as evidence of corrupt attitude on my part and I'm looking for anybody who can help me to recall what took place there.
C. That's a helluva note, John.
E. I agree.
C. If you want me to be forthwith and straightforward with you, I'll recollect anything you want me to.
E. Well, no, let me, let me tell you what my problem is and then you can . . . I've got to tell what I recall and what I don't recall. He alleges that I said two things at that meeting. One that we ought to deep six the contents of the safe, quote, unquote. And, two, that we ought to get Hunt to leave the country.
C. Oh, I could . . . listen, John, if anything like that. If either one of those two things were said that would be vivid in my mind.
E. I would think so. I would think so.
C. And that's objectively.
E. Now, in point of fact, Dean phoned Liddy and asked Liddy to have Hunt leave the country.
C. That's new news to me.
E. Yeah, but you see this . . . and what he's doing is saying well I was just being a good German and carrying out orders.
C. No, I would have absolutely no trouble in remembering either one of those two things had that been said.
E. Well, OK.
C. I would just remember that.
E. Yeah, that's a fairly dramatic event. OK, thank you very much. Awfully sorry to have bothered you, I just don't understand.
C. If there's anything I can do in this thing, please let me . . .
E. I will. I will. Thank you, Ken.

EXHIBIT No. 109

Conversation with Chuck Colson, April 17, 1973.

- C. Colson.
H. Holly Holm (Colson's secretary).
E. Ehrlichman.
E. Hello.
H. Hello, Mr. Colson's office.
E. Yes, this is John Ehrlichman.
H. Hi, Mr. Ehrlichman.
E. Mr. Colson in?
H. Yes, just a minute please.
C. Hello.
E. Hi.
C. Hi, John, I'll be over about 11 if that's convenient.
E. Fine, that's very good.
C. Two quick questions, though. One thing I should tell you is that our great find last night really started accelerating. Something coming out this morning. Dean involved. Now I notice the LA Times has it this morning but the people that Shapiro has been getting information from, you know, the town is buzzing with, is alive with the story, so I don't think we have a helluva lot of time.
E. All right.
C. I just thought I'd let you know that.
E. I appreciate it.
C. Did he, when he went over there, was he given any immunity?
E. Not yet.
What they've done, apparently.
C. They shouldn't give it to him.
E. I know it. What they said to him is that unless he turns up corroborated evidence against Haldeman and me.
C. Is that who he's trying to make?
E. Sure.
C. Who, Dean is?
E. Yep.
C. That's John Mitchell again. Son of a bitch.
E. Unless he does that he doesn't get immunity. Now my grapevine tells me that you are going to be summoned over there today.
C. Oh, really?
E. Yep. And that they're going to ask you about a meeting in my office which Dean has highlighted as the central gemstone in the case against me and so just in case you get hauled over there before 11 o'clock, maybe I'd better tell you about it. It was a meeting that Kehrli, Clawson, you, Dean and I had here.
C. I wasn't there.
E. In my office.
C. I was not there. Dean tried this one out on me Friday night, and I said the only thing I can ever recall, John, is I once told you I thought it was a stupid, god-damn thing for Hunt to be unavailable.
E. Well, that's the meeting where supposedly I ordered him to tell Hunt to leave the country.
C. Never heard that. And I will SO state under oath.
E. Or that I admonished everyone that we ought to figure out some way to deep six the contents of Hunt's safe.
C. No. No way. I was the one who said go get Hunt's safe and be sure it's preserved for the FBI.
E. Right.

- C. A. and B it's stupid to get another country. But that was in my office, not yours. And you weren't present.
- C. I can handle that one easily.
- E. But you were not in a meeting here?
- C. Well, I may have been but I sure don't remember that.
- E. That's the way. OK.
- C. All right? I can handle that.
- E. Thank you, I'll see you at 11.
- C. There's a couple of things you and I need to do to protect each other's flank here but we'll talk about that, but no, I'm serious.
- E. Fair enough.
- C. Let's get it clearly understood that son of a bitch doesn't get immunity. I want to nail him.
- E. Well I'm doing my best.
- C. No, I want to nail him. I'll take immunity first.
- E. OK.
- C. All right?
- E. All right.
- C. Thanks.

EXHIBIT NO. 109A

*STATEMENT OF BERNARD FENSTERWALD, JR.
MAY 24, 1973

MR. CHARIMAN:

From a lawyer's standpoint, I find it somewhat unseemly to have to involve myself in a public dialogue such as we are having today and had yesterday.

However, Mr. Alch's lengthy statement of yesterday cast aspersions on my client's veracity and my personal motivations in representing Mr. McCord. A response is necessary to clear up the record, hopefully once and for all, so that this Committee can proceed with its business.

My statement is very brief, but I will be happy to answer any questions you have either during or after my statement.

My first interest in the Watergate Affair began, as it did for most Americans, on June 19th when we read about it in the newspapers. At that time I had some specialized interests in the Affair, in addition to my interests as an ordinary citizen.

I am a lifelong Democrat. Certainly, as I'm sure the majority of this Committee will agree, that is nothing to be ashamed of. Nor does it automatically follow that my motivations should be suspect because I am a Democrat. If that were true, this Committee should not be in business.

*Subsequent to the testimony of Gerald Alch in Hearings of May 23 and 24, 1973, Senate Select Committee on Presidential Campaign Activities, the committee received this statement to be included in the record.

As a lifelong Democrat, it was my suspicion that we were only seeing the tip of the iceberg, and that the election was about to be lost because of illegal activities.

The wiretap aspects of the case were of particular interest because I had spent three years of my life as a Senate Counsel attempting ... unsuccessfully ... to get a federal law outlwing all wiretapping.

I was also interested as a person who believed most strongly that the U.S. Government has lied blatantly in vitally important matters when they thought they could get away with it.

Thus, I had a number of interests in Watergate from the outset.

My interest in Jim McCord began with a request by a mutual friend, Lou Russell, by Mrs. McCord and by Mr. Alch to see if I could do something about the \$100,000 cash bail set by the trial judge. I thought then and I think now that such a bail was excessive under the circumstances. Recently, I believe, John Mitchell was released on his own recognizance. Further, there are many accused and convicted felons walking the streets of Washington on a fraction of this bail. I believed that with his background and ties with the Community, Mr. McCord was a good bail risk.

I went to friends to see if they would help. As I know it is important to Minority Counsel Fred Thompson, I will state that one of the persons approached was an employee of the Democratic National Committee; ultimately, he said he thought it would be counter-productive for him to try to help, and he politely refused. Ultimately, the \$100,000 was raised by myself, Mrs. McCord and some of her friends and relatives. The money is now in two accounts at the Riggs National Bank.

When Jim McCord was before Judge Sirica for sentencing, the Court postponed sentencing, suggesting that Mr. McCord give his information to both the Grand Jury and to the Senate Committee. Apparently knowing of my long Senate experience, McCord asked me if I could arrange a meeting with the proper Senate authorities and assist him legally in this matter. Such a meeting was arranged promptly, and Mr. McCord has spent a good part of his time since that date in meeting with the Committee and its staff.

The country wants to know the truth about Watergate and related events. This Committee does. Chief Judge John Sirica does. And James McCord does. The moment Judge Sirica indicated that the length of his sentence might depend on the degree of his cooperation with the Grand Jury and the Senate, at that moment, McCord's interests, the country's interests, and the interests of truth coincided. All that has been done since then, including

cooperation with this Committee, has followed that one single path. If having the truth brought out means implicating the President or some of his top staff, so be it. As Senator Talmadge said last week, let the chips fall where they may.

I do not apologize for this approach to seeing the truth come out, and neither does Jim McCord.

Yesterday, my motivations in taking on Mr. McCord as a client were impugned by Mr. Alch. All I can say in rebuttal is that Mr. McCord happens to want me as his lawyer and does not want Mr. Alch. If Mr. Alch has any objection about that state of affairs there is a proper forum to argue that in, and that is, of course, before a Lawyer's Grievance Committee. He and I are both members of the Massachusetts Bar and he can take the matter up with that Bar's Grievance Committee. I know this Committee has neither the time nor inclination to hear lawyers making charges and counter-charges against each other.

I'd be happy to answer any questions which the members of this Committee might wish to ask.

I swear that the preceding is true and correct to the best of my recollection.

B. Fensterwald, Jr.
Bernard Fensterwald, Jr.

Subscribed before me this 29th day of May, 1973.

Perrilla M. Neal
Notary Public

My Commission Expires February 28, 1978

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